



ANITA M. BOCK
Director

COUNTY OF LOS ANGELES

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

425 Shatto Place, Room 205 -- Los Angeles, California 90020
(213) 351-5602

February 12, 2002

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

AGREEMENT WITH THE SHIELDS FOR FAMILIES PROJECT FOR ENHANCED COMMUNITY FAMILY PRESERVATION SERVICES (SUPERVISORIAL DISTRICT 2) (3 VOTES)

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and instruct the Chairman to sign the Agreement with The Shields for Families Project (Shields) effective the date of execution through June 30, 2002, to provide enhanced community family preservation services. The maximum contract sum is \$114,086 and will be 100% financed using State/Federal revenue. The FY 2001-02 Adopted Budget includes funding for this agreement.
2. Delegate authority to the Director of the Department of Children and Family Services (DCFS), or her designee, to execute contract amendments to increase the maximum contract sum by up to ten percent (10%) above the original maximum contract sum in order to accommodate any unanticipated increase in services, provided that: a) the Board of Supervisors has appropriated sufficient funds, b) approval of County Counsel and the Chief Administrative Office (CAO) is obtained prior to executing such amendment, and c) the Director confirms in writing to the Board of Supervisors and the CAO within 10 workdays after execution that such amendments have been executed. The cost of this amendment will be 100% financed using State/Federal revenue included in the FY 2001-02 Adopted Budget.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTIONS

Board of Supervisors
GLORIA MOLINA
First District
YVONNE BRATHWAITE BURKE
Second District
ZEV YAROSLAVSKY
Third District
DON KNABE
Fourth District
MICHAEL D. ANTONOVICH
Fifth District

The Honorable Board of Supervisors
February 12, 2002
Page 2

The recommended actions will provide enhanced community family preservation services to consenting families who have unsubstantiated allegations of child abuse or neglect, but are determined to be at risk and in need of preventative services, reside in the City of Compton or adjacent communities, and are referred to Shields by DCFS' Region VII Lakewood office.

The agreement with Shields is known as the Compton Demonstration Project.

Implementation of Strategic Plan Goals

The recommended actions are consistent with the principles of the Countywide Strategic Plan - Goal #1-Service Excellence, Strategy #2-Design Seamless Service Delivery System, and Goal #5-Children and Families' Well-Being, Strategy #1-Coordinate, collaborate and integrate services for children and families across functional and jurisdictional boundaries. Execution of the agreement will increase access to network services and enhanced community family preservation services.

FISCAL IMPACT/FINANCING

The cost of the agreement (and the amendment if executed) with Shields is \$114,086 and will be fully financed using the Community-Based Family Resource and Support (CBFRS) grant which is administered by the California Department of Social Services (CDSS), Office of Child Abuse Prevention; there is no net County cost. The FY 2001-02 Adopted Budget includes funding for this agreement.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Compton Demonstration Project was originally funded by a grant from the Edna McConnel Clark Foundation. On April 15, 1997, your Board accepted the Edna McConnel Clark Foundation grant to develop a pilot project that would increase the role of Community Family Preservation Networks (CFPNs) in abuse prevention. The Edna McConnel Clark Foundation grant funds were used to enter into agreements with two CFPNs, Shields and Equipoise Inc., to provide a pilot program of enhanced community family preservation services. At the conclusion of the foundation grant and due to the program's success, the Compton Demonstration Pilot Project was funded by the CDSS

The Honorable Board of Supervisors
February 12, 2002
Page 3

Office of Child Abuse Prevention through September 30, 2000. When DCFS applied to the Office of Child Abuse Prevention for the CBFRS grant, Shields and Equipoise, Inc. were identified as the only CFPNs in the City of Compton that provided these services. Both agencies were chosen because of the great success they experienced in providing similar services to DCFS clients through the Compton Demonstration Pilot Project. As of June 30, 2001, Equipoise, Inc. ceased providing family preservation services and was not considered as a potential contractor for this Agreement. By entering into an Agreement with Shields, enhanced family preservation services will once again be provided to families in the Compton area.

Prior to the Compton Demonstration Project, only families for whom a report to DCFS had been substantiated were referred to the CFPNs. At that time, families with unsubstantiated child abuse reports generally received no follow-up services, even though these families are at greater risk for future substantiated reports to DCFS than other families with similar backgrounds.

The term of the Agreement shall commence upon execution by the Board of Supervisors through June 30, 2002. Therefore, the agreement language referring to an annual contract sum has been deleted to reflect the term of the Agreement.

The CAO has reviewed and approved this Board Letter. County Counsel has reviewed this Board Letter and approved the attached agreement as to form. The contractor is in compliance with all Board, CAO and County Counsel requirements.

CONTRACTING PROCESS

DCFS has determined that the competitive procurement process does not apply to this Agreement, because the State does not require a solicitation process for CBFRS grant funds. The Compton Demonstration project was extended when the CDSS Office of Child Abuse Prevention granted CBFRS funds effective October 2001 through June 30, 2002, specifically for the Compton Demonstration Project. CBFRS funding is directed specifically toward the type of service provided by the Compton Demonstration project, targeting areas that have a high number of out-of-home placements. Furthermore, Shields qualifies as a sole source CFPN provider of services as described under the grant since Equipoise, Inc. is no longer a CFPN provider.

The Honorable Board of Supervisors
February 12, 2002
Page 4

The Agreement expressly provides that the County has no obligation to pay for expenditures by the vendor beyond the contract amount. Further, contractor will not be asked to perform services that exceed the contract amount, scope of work, or contract dates.

The Department has evaluated and determined that the Living Wage Program (County Code Chapter 2.201) does not apply to the Agreement.

IMPACT ON CURRENT SERVICES

Your Board's approval of the Agreement will allow Shields to serve the needs of families that would otherwise not be served. The funds will provide services to approximately two hundred (200) families during the term of the Agreement.

CONCLUSION

Upon execution by your Board, it is requested that the Executive Officer/Clerk of the Board send an executed copy of the Board letter and Agreement to:

1. Department of Children and Family Services
Contract Management Services
425 Shatto Place, Room #205
Los Angeles, CA 90020
Attn: Armand Montiel, Contract Manager
2. The Shields for Families Project
215 S. Acacia Street
Compton, CA 90222
Attn: Kathryn Icenhower, Executive Director
3. Office of County Counsel
Advice and Litigation
201 Centre Plaza Drive
Monterey Park, CA 91754
Attn: Kathleen Felice, Senior Deputy County Counsel

The Honorable Board of Supervisors
February 12, 2002
Page 5

Respectfully submitted,

ANITA M. BOCK
Director

AB:AM:
SN:NR

Attachments (12)

c: Chief Administrative Officer
County Counsel
Executive Officer, Board of Supervisors
Auditor-Controller

**COMPTON DEMONSTRATION PROJECT FOR
ENHANCED COMMUNITY FAMILY PRESERVATION SERVICES**

BETWEEN

THE COUNTY OF LOS ANGELES

AND

THE SHIELDS FOR FAMILIES PROJECT

February, 2002

TABLE OF CONTENTS

Section	Page
1.0 Applicable Documents	2
2.0 Contractor's Services	3
3.0 Term and Termination	3
4.0 Contract Sum	3
5.0 Payment and Invoices	3
6.0 Records and Audits	6
7.0 Audit Settlement	7
8.0 Indemnification	7
9.0 General Insurance Requirements	8
10.0 Insurance Coverage Requirements	10
11.0 Notices	10
12.0 Changes and Amendments	11
13.0 Assignment/Delegation of Rights	13
14.0 Subcontracting	13
15.0 Independent Contractor Status	15
16.0 Covenant Against Contingent Fees	15
17.0 Disclosure of Information	15
18.0 Compliance with Applicable Laws	16
19.0 Compliance with Civil Rights Laws	17
20.0 Non-Discrimination in Employment	17
21.0 Client Grievances	18
22.0 Events of Default	18
23.0 Termination for Default	19
24.0 Termination for Improper Consideration	19
25.0 Termination for Convenience	20
26.0 Contractor Responsibility and Debarment	21
27.0 Limitation of County's Obligation due to Non-Appropriation of Funds	22
28.0 Conflict of Interest	23
29.0 Employee Benefits and Taxes	23
30.0 Notice to Employees Regarding the Federal Earned Income Credit	23
31.0 Confidentiality	24

32.0	Contract Enforcement, Quality Assurance Plan, Monitoring and Review	24
33.0	Employment Eligibility Verification	25
34.0	Criminal Clearances	25
35.0	Child Support Compliance Program	27
36.0	Former Foster Youth Consideration	28
37.0	Consideration of Hiring County Employees Targeted for Layoffs	29
38.0	Consideration of Hiring GAIN Participants	29
39.0	County Lobbyists	31
40.0	Notice of Delays	31
41.0	Use of Recycled-Content Paper	31
42.0	Proprietary Rights	31
43.0	Fixed Assets	32
44.0	Child Abuse Prevention Reporting	33
45.0	Community Business Enterprise Program	33
46.0	Authorization Warrant	33
47.0	Dispute Resolution Procedure	33
48.0	Interpretation of Contract	35

Exhibits

Exhibit A	Statement of Work
Exhibit B	Budget
Exhibit C	Job and Performance Requirement Summary
Exhibit D	Certification of Independent Price Determination
Exhibit E	Contractor's Equal Employment Opportunity (EEO) Certification
Exhibit F	Community Business Enterprise Form (CBE)
Exhibit G	Employee Acknowledgment and Confidentiality Agreement
Exhibit H	Auditor-Controller Contract Accounting and Operating Handbook
Exhibit I	Office of Management and Budget Circular A-87
Exhibit J	Office of Management and Budget Circular A-122
Exhibit K	County's Child Support Compliance Program Certification
Exhibit L	Notice of Federal Earned Income Credit

**AGREEMENT FOR
COMPTON DEMONSTRATION PROJECT
FOR
ENHANCED COMMUNITY FAMILY PRESERVATION SERVICES**
(hereinafter referred to as "Agreement")

This Agreement, made and entered into this _____ day of _____ 2002, by and between

County of Los Angeles
hereinafter referred to as
"COUNTY"

and

The Shields For Families Project
Hereinafter referred to as
"CONTRACTOR"

W I T N E S S E T H

WHEREAS, pursuant to Government Code Sections 26227, 31000 and 53703, COUNTY is permitted to contract for services, and

WHEREAS, the COUNTY desires to provide case management services, and

WHEREAS, COUNTY has determined that the services to be provided under this Agreement are necessary for families in Compton and adjacent communities with inconclusive allegation(s) under public child protective services; and

WHEREAS, pursuant to provisions of the Office of Child Abuse Prevention Community Based Family Resource and Support Program (CBFRS) grant to finance 100% of the cost, the COUNTY is designated to administer CBFRS grant funds for establishing enhanced family preservation services in Compton and for families diverted to the CONTRACTOR from the COUNTY; and

WHEREAS, CONTRACTOR warrants that it possesses the competence, expertise and personnel necessary to provide such services; and

WHEREAS, the following terms, as used in this Agreement, shall have the following meanings:

- A. "Contract" means a legally binding Agreement between two parties;

- B. "Day(s)" means calendar day(s) unless otherwise specified;
- C. "DCFS" means County's Department of Children and Family Services;
- D. "Director" means County's Director of Children and Family Services or her authorized designee;
- E. "Fiscal Year(s)" means County's Fiscal Year which commences July 1 and ends the following June 30;
- F. "Project" means the work to be performed by CONTRACTOR as defined in Exhibit A, Statement of Work;
- G. "Program Manager" means COUNTY representative responsible for daily management of contract operation and overseeing monitoring activities;
- H. "Subcontract" means a contract by which a third party agrees to provide services or materials necessary to fulfill an original contract.

NOW THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein, the parties hereto and each of them do agree as follows:

1.0 APPLICABLE DOCUMENTS

- 1.1 This Agreement, and the Exhibits hereto, constitute the complete and exclusive statement of understanding between the parties, which supersedes all previous agreements, written or oral, and all other communications between the parties relating to the subject matter of this Agreement.
- 1.2 Exhibits A, B, C, D, E, F, G, H, I, J, K, and L set forth below are attached to and incorporated by reference in this Agreement.
- 1.3 In the event of any conflict in the definition or interpretation of any word, responsibility, service, schedule, or contents of a deliverable product between this Agreement and Exhibits, or among Exhibits, said conflict or inconsistency shall be resolved by giving precedence first to the Agreement, and then to the Exhibits according to the following priority:

Exhibit A	-Statement of Work
Exhibit B	-Budget
Exhibit C	-Job and Performance Requirement Summary
Exhibit D	-Certification of Independent Price Determination
Exhibit E	-Contractor's Equal Employee Opportunity (EEO) Certification
Exhibit F	-Community Business Enterprise Form (CBE)
Exhibit G	-Employee Acknowledgment and Confidentiality Agreement
Exhibit H	-Auditor-Controller Contract Accounting and Operating Handbook
Exhibit I	-Office of Management and Budget Circular (OMB) A-87
Exhibit J	-Office of Management and Budget Circular (OMB) A-122
Exhibit K	-County's Child Support Compliance Program Certification
Exhibit L	-Federal Earned Income Credit Notice

2.0 CONTRACTOR'S SERVICES

- 2.1 Pursuant to the provisions of this Agreement, CONTRACTOR shall provide COUNTY with enhanced family preservation services as defined herein and as more fully set forth in Exhibit A, Statement of Work.

3.0 TERM AND TERMINATION

The term of this Agreement shall commence on date of execution by COUNTY Board of Supervisors and shall continue through June 30, 2002, unless terminated earlier as provided herein.

4.0 CONTRACT SUM

- 4.1 During the term of this Agreement, COUNTY shall reimburse CONTRACTOR for the costs of performing the services set forth in Exhibit A, Statement of Work, in accordance with Section 5.0, Payment and Invoices, provided that the total amount payable under this Agreement shall not exceed \$114,086, Maximum Contract Sum.
- 4.2 CONTRACTOR has prepared and submitted to COUNTY a Budget segregating direct and indirect costs for the work to be performed by CONTRACTOR under this Agreement. Budgeted expenses shall be reduced by applicable CONTRACTOR revenues which are identified thereon. The line items shall provide sufficient detail to determine the quality and quantity of services to be delivered. This Budget is attached hereto and incorporated by reference herein as Exhibit B, Budget. CONTRACTOR represents and warrants that the Budget is true and correct in all respects, and services shall be delivered hereunder in accordance with the Budget. In the event the Maximum Contract Sum is increased pursuant to Section 4.0 hereof, CONTRACTOR shall prepare and submit an amended Budget.
- 4.3 COUNTY has no obligation to pay for expenditures by CONTRACTOR that exceed the Maximum Contract Sum.

5.0 PAYMENT AND INVOICES

- 5.1 For work performed in accordance with the terms of this Agreement as determined by COUNTY, CONTRACTOR shall invoice COUNTY monthly in arrears for contract services at the actual cost incurred in conformance with Exhibit B, Budget and in the format prescribed by the COUNTY (i.e. personnel, employee benefits, supplies and expenses, equipment, travel, and indirect costs).
- 5.2 CONTRACTOR, without prior approval of COUNTY, may reallocate up to a maximum of five percent (5%) of the maximum contract sum between the approved line item budget categories (i.e. personnel, employee benefits, supplies and expenses, equipment, travel and indirect costs). Any subsequent budget modifications above the five

percent (5%) maximum shall be agreed to by the parties and requested in writing by CONTRACTOR. In any event, such revisions shall not result in any increase in the Maximum Contract Sum. Such requests to COUNTY shall be addressed as follows:

Rhelda Shabazz, Program Manager
County of Los Angeles
Department of Children and Family Services
425 Shatto Place, Room 150
Los Angeles, CA 90020

And a duplicate copy to:

Department of Children and Family Services
Contract Management Services
425 Shatto Place, Room 205
Attn: Armand Montiel, Contract Manager

- 5.3 Expenditures made by CONTRACTOR in the operation of this Agreement shall be in compliance and conformity with the Office of Management and Budget (OMB) Circular, A-87 (Exhibit I) or A-122 (Exhibit J) whichever applies and the line item budget categories of Exhibit B, Budget.
- 5.4 CONTRACTOR shall submit an invoice in arrears for services rendered in the previous month. All invoices should be received within thirty (30) days of the last day of the previous month but may be received later than thirty (30) days, at COUNTY's sole discretion, as long as sufficient funds remain under the Agreement. All such services rendered by CONTRACTOR shall be paid in accordance with Exhibit B, Budget.
- 5.5 CONTRACTOR shall submit the original monthly invoice to the Finance Office and one copy to the COUNTY Program Manager for review and approval.

CONTRACTOR shall send original invoices to be approved to:

County of Los Angeles
Department of Children and Family Services
425 Shatto Place, Room 204
Los Angeles, California 90020
Attention: Contract Payment Unit

And a duplicate copy of the invoices to:

Rhelda Shabazz, Program Manager
County of Los Angeles
Department of Children and Family Services

425 Shatto Place, Room 150
Los Angeles, California 90020

- 5.6 Upon receipt of CONTRACTOR's monthly invoice, Finance shall forward the invoice to the COUNTY Program Manager, or designee, for review and approval. The COUNTY Program Manager shall review the detailed charges to ensure charges are in accordance with the Agreement terms and that invoiced services have been received.
- 5.7 Upon approval of the monthly invoice, the COUNTY Program Manager, or designee, shall return the invoice to the Finance Office for payment.
- 5.8 Payment to CONTRACTOR will be made in arrears on a monthly basis for services performed, provided that the CONTRACTOR is not in default under any provision of this Agreement. COUNTY shall attempt to authorize payment within thirty (30) days following receipt of invoice, provided that all work performed during the preceding month has been reviewed, accepted, signed and dated by the Program Manager or designee. COUNTY has no obligation to pay for any work except those services expressly authorized by this Agreement.
- 5.9 In compliance with Internal Revenue Service (IRS) requirements, CONTRACTOR shall provide CONTRACTOR's Tax Identification Number.
- 5.10 CONTRACTOR is responsible for the accuracy of invoices submitted to COUNTY. Further, it is the responsibility of CONTRACTOR to reconcile or otherwise correct inaccuracies or inconsistencies in the invoices submitted by CONTRACTOR and to notify COUNTY of any overpayments received by CONTRACTOR. Overpayment received by CONTRACTOR, as verified by DCFS' Program Manager, or designee, shall be returned to COUNTY by CONTRACTOR within thirty (30) days of receiving notification of such overpayment, or will be set off against future payments due CONTRACTOR.

6.0 RECORDS AND AUDITS

- 6.1 CONTRACTOR shall maintain accurate and complete financial records of all its activities and operations relating to this Agreement in accordance with generally accepted accounting principles and which meet the requirements for contract accounting described in Auditor-Controller Contract Accounting and Operating Handbook. CONTRACTOR shall also maintain accurate and complete employment and other records relating to its performance of this Agreement. CONTRACTOR agrees that COUNTY, or its authorized representatives

shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or records relating to this Agreement. All such material, including, but not limited to, all financial records, timecards and other employment records and confidential information, shall be kept and maintained by CONTRACTOR at a location in Los Angeles County and shall be made available to COUNTY during the term of this Agreement and for a period of five (5) years thereafter unless COUNTY's written permission is given to dispose of any such material prior to such time. If such material is located outside of Los Angeles County, then, at COUNTY's sole option, CONTRACTOR shall pay COUNTY for travel per diem and other costs incurred by COUNTY in exercising its rights under this Section.

- 6.2 In the event that an audit is conducted of CONTRACTOR specifically regarding this Agreement by any Federal or State auditor, or by any auditor employed by CONTRACTOR or otherwise, then CONTRACTOR shall file a copy of such audit report with County's Auditor-Controller within thirty (30) days of CONTRACTOR's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Agreement. COUNTY shall make a reasonable effort to maintain the confidentiality of such audit report(s).
- 6.3 CONTRACTOR shall be responsible for annual financial audits of its agency and its subcontractor(s) if required by COUNTY and/or the California Department of Social Services (CDSS), to be conducted by an independent audit firm and in accordance with generally accepted auditing standards. Within thirty (30) calendar days after issuance of the audit reports, CONTRACTOR shall forward copies of such reports to DCFS.
- 6.4 CONTRACTOR shall, during normal business hours, allow appropriate COUNTY, State and Federal agencies, including CDSS, County's Auditor-Controller or its designee to evaluate, audit, review, inspect and monitor its accounting books and records of program operations, including the interview of CONTRACTOR's staff, insurance agents, banks, personnel, vendors and subcontractor(s). Methods may include the inspection of accounting ledgers, journals, canceled checks, timecards, personnel records, fringe benefit rate notices, receipts and invoices, payroll tax records, subcontracts, space and equipment lease agreements, and other relevant accounting books, records, worksheets and logs as appropriate for ensuring CONTRACTOR's accountability of expenditures and program performance under this Agreement. CONTRACTOR shall ensure the cooperation of all subcontractor(s), its staff, and Board members in all such efforts.
- 6.5 All uses of funds paid to CONTRACTOR and other financial transactions related to CONTRACTOR's provision of services under this Agreement are subject to review and/or audit by DCFS, County's Auditor-Controller or its designee, or the State of California. In the event this Agreement is subject to Audit exceptions, CONTRACTOR shall pay to COUNTY the

full amount of CONTRACTOR's liability for such audit exceptions, as determined by DCFS, upon demand by COUNTY.

- 6.6 Failure on the part of CONTRACTOR to comply with the provisions of this Section shall constitute a material breach of this Agreement upon which COUNTY may withhold reimbursement or terminate this Agreement.

7.0 AUDIT SETTLEMENT

If, at any time during the term of this Agreement or within five (5) years after the expiration or termination of this Agreement, authorized representatives of COUNTY conduct an audit of CONTRACTOR regarding the services provided to COUNTY hereunder and if such audit finds that COUNTY's dollar liability for such services is less than payments made by COUNTY to CONTRACTOR, then CONTRACTOR agrees that the difference, at the COUNTY's discretion, shall be either: (1) repaid forthwith by CONTRACTOR to COUNTY by cash payment; or (2) at COUNTY's option, credited against future payments hereunder to CONTRACTOR. If such audit finds that COUNTY's dollar liability for services provided hereunder is more than payments made by COUNTY to CONTRACTOR, then the difference shall be paid to CONTRACTOR by COUNTY provided that in no event shall COUNTY's maximum obligation for this Agreement exceed the Maximum Contract Sum.

8.0 INDEMNIFICATION

CONTRACTOR shall indemnify, defend and hold harmless COUNTY, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with CONTRACTOR's acts and/or omissions arising from and/or relating to this Agreement.

9.0 GENERAL INSURANCE REQUIREMENTS

Without limiting CONTRACTOR's indemnification of COUNTY and during the term of this Agreement, CONTRACTOR shall provide and maintain, and shall require all of its subcontractors to maintain, the programs of insurance specified in this Agreement in Section 10, Insurance Coverage Requirements. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by COUNTY, and such coverage shall be provided and maintained at CONTRACTOR's own expense.

- 9.1 Evidence of Insurance: Certificate(s) or other evidence of coverage satisfactory to COUNTY shall be delivered to DCFS Contract Administrator, 425 Shatto Place, Room 205, Los Angeles, CA 90020

prior to commencing services under this Agreement. Such certificates or other evidence shall:

- 9.1.1 Specifically identify this Agreement.
 - 9.1.2 Clearly evidence all coverages required in this Agreement.
 - 9.1.3 Contain the express condition that COUNTY is to be given written notice by mail at least thirty (30) days in advance of cancellation for all policies evidenced on the certificate of insurance.
 - 9.1.4 Include copies of the additional insured endorsement to the commercial general liability policy, adding the COUNTY of Los Angeles, its Special Districts, its officials, officers and employees as insureds for all activities arising from this Agreement.
 - 9.1.5 Identify any deductibles or self-insured retentions for COUNTY's approval. The COUNTY retains the right to require CONTRACTOR to reduce or eliminate such deductibles or self-insured retentions as they apply to COUNTY, or, require CONTRACTOR to provide a bond guaranteeing payment of all such retained losses and related costs, including, but not limited to, expenses or fees, or both, related to investigations, claims administrations, and legal defense. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.
- 9.2 Insurer Financial Ratings: Insurance is to be provided by an insurance company acceptable to the COUNTY with an A.M. Best rating of not less than A:VII, unless otherwise approved by COUNTY.
- 9.3 Failure to Maintain Coverage: Failure by CONTRACTOR to maintain the required insurance, or to provide evidence of insurance coverage acceptable to COUNTY, shall constitute a material breach of the Contract upon which COUNTY may immediately terminate or suspend this Agreement. COUNTY, at its sole option, may obtain damages from CONTRACTOR resulting from said breach. Alternatively, COUNTY may purchase such required insurance coverage, and without further notice to CONTRACTOR, COUNTY may deduct from sums due to CONTRACTOR any premium costs advanced by COUNTY for such insurance.
- 9.4 Notification of Incidents, Claims or Suits: CONTRACTOR shall report to COUNTY:
- 9.4.1 Any accident or incident relating to services performed under this Agreement which involves injury or property damage which may result in the filing of a claim or lawsuit against CONTRACTOR and/or COUNTY. Such report shall be made in writing within 24 hours of occurrence.

- 9.4.2 Any third party claim or lawsuit filed against CONTRACTOR arising from or related to services performed by CONTRACTOR under this Agreement.
- 9.4.3 Any injury to a CONTRACTOR employee which occurs on COUNTY property. This report shall be submitted on a "Non-Employee Injury Report" to the COUNTY Contract Manager.
- 9.4.4 Any loss, disappearance, destruction, misuse, or theft of any kind whatsoever of COUNTY property, monies or securities entrusted to CONTRACTOR under the terms of this Agreement.
- 9.5 Compensation for COUNTY Costs: In the event that CONTRACTOR fails to comply with any of the indemnification or insurance requirements of this Agreement, and such failure to comply results in any costs to COUNTY, CONTRACTOR shall pay full compensation for all costs incurred by COUNTY.
- 9.6 Insurance Coverage Requirements for Subcontractors: CONTRACTOR shall ensure any and all subcontractors performing services under this Agreement meet the insurance requirements of this Agreement by either:
 - 9.6.1 CONTRACTOR providing evidence of insurance covering the activities of subcontractors, or
 - 9.6.2 CONTRACTOR providing evidence submitted by subcontractors evidencing that subcontractors maintain the required insurance coverage. COUNTY retains the right to obtain copies of evidence of subcontractor insurance coverage at any time.

10.0 INSURANCE COVERAGE REQUIREMENTS:

- 10.1 General Liability insurance (written on ISO policy form CG 00 01 or its equivalent) with limits of not less than the following:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million
- 10.2 Automobile Liability insurance (written on ISO policy form CA 00 01 or its equivalent) with a limit of liability of not less than one million dollars (\$1,000,000) for each accident. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles, or coverage for "any auto."

- 10.3 Workers' Compensation and Employer's Liability insurance providing workers' compensation benefits, as required by the Labor Code of the State of California or by any other state, and for which CONTRACTOR is responsible. If CONTRACTOR's employees will be engaged in maritime employment, coverage shall provide workers' compensation benefits as required by the U.S. Longshore and Harbor Workers' Compensation Act, Jones Act or any other federal law for which CONTRACTOR is responsible.

In all cases, the above insurance also shall include Employers' Liability coverage with limits of not less than the following:

Each Accident:	\$1 million
Disease – policy limit:	\$1 million
Disease – each employee:	\$1 million

- 10.4 Professional Liability: Insurance covering liability arising from any error, omission, negligent or wrongful act of the CONTRACTOR, its officers or employees with limits of not less than one million dollars (\$1,000,000) per occurrence and three million dollars (\$3,000,000) aggregate. The coverage also shall provide an extended two-year reporting period commencing upon termination or cancellation of this Agreement.

11.0 NOTICES

- 11.1 All notices shall be given in writing by enclosing the same in a sealed envelope addressed to the intended party and by depositing such envelope with postage prepaid in the United States Post Office or any substation or public letterbox. All notices to COUNTY shall be sent in duplicate addressed to the following:

Anita M. Bock, Director
Department of Children and Family Services
425 Shatto Place
Los Angeles, California 90020
Attention: Contract Administrator
Contract Management Services

All notices to CONTRACTOR shall be sent to CONTRACTOR

The Shields for Families Project
Kathryn Icenhower, Executive Director
12714 S. Avalon Blvd.
Los Angeles, CA 90061

Phone: (323) 242-5000
Fax: (323) 242-5011

OR

Such other place as may hereinafter be designated in writing by the CONTRACTOR.

- 11.2 All Notices may also be given upon personal delivery to any person whose actual knowledge would be sufficient notice to CONTRACTOR. Further, it is expressly understood that actual knowledge of an individual CONTRACTOR or of a co-partner, or if the CONTRACTOR is a corporation, of an officer or member of the corporation, or by the managing agent regularly in charge of the work on behalf of CONTRACTOR, shall in any case be sufficient notice.
- 11.3 CONTRACTOR shall notify COUNTY as provided in Section 11.1 when expenditures under this Agreement total seventy-five per cent (75%) of the Maximum Contract Sum. CONTRACTOR shall also notify COUNTY as provided in Section 11.1 when the Agreement is within six (6) months of expiration.

12.0 CHANGES AND AMENDMENTS

The COUNTY reserves the right to change any portion of the work required under this Agreement, or make amendment to such other terms and conditions as may become necessary and reasonable. Any such revisions shall be accomplished in the following manner:

- 12.1 For any change which does not affect the period of performance, Maximum Contract Sum, or payments, and which does not materially alter any term or condition included in this Agreement, an amendment shall be prepared, and signed by CONTRACTOR and the Director. Approval of County Counsel must be obtained for any changes which affect the scope of work.
- 12.2 For any change which affects the period of performance, Maximum Contract Sum, or payments, or which materially alters any other term or condition in this Agreement, a written amendment shall be prepared, signed by the CONTRACTOR, and thereafter submitted to County's Board of Supervisors for consideration and, if approved, execution.
- 12.3 For purposes of Sections 12.1 and 12.2, a change materially alters a term or condition included in this Agreement if it: (1) is significant as to price, quantity, quality or delivery when contrasted with the total costs or scope of the services being procured; (2) alters minimum requirements for prospective bidders, proposers or negotiating entities for this Agreement; or (3) would result in a change in the Maximum Contract Sum set forth in Section 4.0 of this Agreement.
- 12.4 Notwithstanding the provisions of Sections 12.1 and 12.2, County's DCFS Director may, without further action by County's Board of Supervisors, prepare and sign amendments to this Agreement which increase payments to CONTRACTOR which are commensurate with

increases in the units of service being provided under this Agreement under the following conditions.

12.4.1 COUNTY's total payments to CONTRACTOR shall not increase more than ten percent (10%) and in the aggregate above the original Maximum Contract Sum during the term of this Agreement.

12.4.2 County's Board of Supervisors has appropriated sufficient funds for all changes described in each such amendment to this Agreement.

12.4.3 Approval of County Counsel and the Chief Administrative Officer is obtained prior to any such amendment to this Agreement; and

12.4.4 The Director shall notify County's Board of Supervisors, Chief Administrative Officer, and County Counsel of all Agreement changes, in writing, within ten (10) days following execution of such amendment.

13.0 ASSIGNMENT/DELEGATION OF RIGHTS

13.1 CONTRACTOR shall not assign its rights or delegate its duties hereunder, either in whole or in part, without the prior written consent of the Los Angeles County Board of Supervisors or the Director in the event the Director has the delegated authority to consent. Any attempted assignment and/or delegation without said consent shall constitute a default under Section 22.0, Events of Default herein and shall be null and void, subject to waiver by COUNTY. If CONTRACTOR is a corporation, partnership, limited liability company or other entity, then an assignment requiring COUNTY's consent hereunder shall also include any sale, exchange, assignment, divestment or change in members, directors or officers giving majority control of CONTRACTOR to any person(s) or legal entity other than the majority in control of CONTRACTOR at the time of execution of this Agreement. Any payments by COUNTY to CONTRACTOR or its assignee, or acceptance of any payments by COUNTY from CONTRACTOR or its assignee on any claim under this Agreement shall not waive or constitute such COUNTY consent.

- 13.2 Upon assignment and/or delegation, each and all of the provisions, agreements, terms, covenants and conditions herein contained, to be performed by CONTRACTOR, shall be binding upon both CONTRACTOR and upon any assignee/delegate thereof.
- 13.3 COUNTY's consent may be reasonably withheld if, among other things, the proposed assignee fails to meet the requirements for contracting satisfied by the original CONTRACTOR and/or the then current COUNTY or State contracting requirements for this or similar agreements. COUNTY may require, as a condition to its consent to assignment, that the assignee enter into an agreement utilizing then current standard COUNTY documentation for this or similar agreements.
- 13.4 Any payments by COUNTY to any delegatee or assignee on any claim under this Agreement shall reduce dollar for dollar any claims which CONTRACTOR may have against COUNTY and shall be subject to set-off, recoupment, or other reduction for any claims which COUNTY may have against CONTRACTOR, whether under this Agreement or otherwise.

14.0 SUBCONTRACTING

- 14.1 No performance of this Agreement or any portion thereof may be subcontracted by CONTRACTOR without the express written authority of County DCFS Director. Any attempt by CONTRACTOR to subcontract performance of any of the terms of this Agreement, in whole or in part, without said consent shall be null and void and shall constitute a breach of the terms of this Agreement. In the event of such a breach, this Agreement may be terminated forthwith. CONTRACTOR shall submit each subcontract to the COUNTY for written approval prior to subcontractor performing any work hereunder.
- 14.2 All of the provisions of this Agreement and any Amendment(s) hereto shall extend to and be binding upon subcontractors, provided that assignment or delegation of rights under a subcontract by subcontractors shall not require COUNTY approval. The CONTRACTOR shall include in all subcontracts the following provision: "This Agreement is a subcontract under the terms of a prime contract with the County of Los Angeles. All representations and warranties contained in this subcontract shall inure to the benefit of the County of Los Angeles."
- 14.3 CONTRACTOR shall indemnify and hold COUNTY harmless from any and all liability arising or resulting from the use of any subcontractor and its employees in the same manner and to the same extent that CONTRACTOR indemnifies COUNTY from any and all liability arising from or resulting from the actions or omissions of its own employees.
- 14.4 CONTRACTOR shall obtain the following from each subcontractor before any subcontractor employee may perform any work under any

subcontract to this Agreement. CONTRACTOR shall maintain and make available upon request of Program Manager all the following documents:

14.4.1 An executed Employee Acknowledgment and Confidentiality Agreement (see Exhibit G) executed by each subcontractor and each of subcontractor's employees approved to perform work hereunder.

14.4.2 Certificates of Insurance which establish that the subcontractor maintains all the programs of insurance required by Section 10.0 of this Agreement (Insurance Coverage Requirements), and

14.4.3 The Tax Identification Number of the subcontracting agency to be placed on the signature page of the subcontract. This Tax Identification Number shall not be identical to the CONTRACTOR's Tax Identification Number.

14.5 CONTRACTOR shall provide County's Program Manager with copies of all executed subcontracts.

14.6 No subcontract shall alter in any way any legal responsibility of CONTRACTOR to COUNTY. CONTRACTOR shall remain responsible for any and all performance required of it under this Agreement, including, but not limited to, the obligation to properly supervise, coordinate, and perform all work required hereunder.

14.7 Notwithstanding any other provision of this Agreement, the parties do not in any way intend that any person or entity shall acquire any rights as a third party beneficiary of this Agreement.

14.8 CONTRACTOR shall be solely liable and accountable for any and all payments and other compensation to all subcontractor's engaged hereunder and their officers, employees, and agents. COUNTY shall have no liability or responsibility whatsoever for any payment or other compensation for any subcontractor or their officers, employees, and agents.

15.0 INDEPENDENT CONTRACTOR STATUS

This Agreement is by and between the COUNTY and CONTRACTOR and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture or association, as between COUNTY and CONTRACTOR. CONTRACTOR understands and agrees that all persons furnishing services to COUNTY pursuant to this Agreement are, for purposes of Workers' Compensation liability, employees solely of CONTRACTOR and not of COUNTY. CONTRACTOR shall bear the sole responsibility and liability for furnishing Workers' Compensation benefits to any person for injuries arising from or connected with service to COUNTY provided pursuant to this Agreement.

16.0 COVENANT AGAINST CONTINGENT FEES

- 16.1 CONTRACTOR warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement for either a flat fee, a percentage commission or any other form or remuneration.
- 16.2 For breach or violation of this covenant, COUNTY shall have the right to terminate this Agreement and/or, at its sole discretion, require the CONTRACTOR to repay any funds converted to such use prior to any payment for past work or performance of any future work.

17.0 DISCLOSURE OF INFORMATION

- 17.1 The CONTRACTOR shall not disclose any details in connection with this Agreement to any party, except as may be otherwise provided herein or required by law. However, in recognizing the CONTRACTOR's need to identify its services and related clients to sustain itself, the COUNTY shall not inhibit the CONTRACTOR from publicizing its role under this Agreement within the following conditions:
 - 17.1.1 CONTRACTOR shall develop all publicity material in a professional manner.
 - 17.1.2 During the course of performance of this Agreement, the CONTRACTOR, its employees, agents, and subcontractors shall not publish or disseminate commercial advertisements, press releases, opinions or feature articles, using the name of the COUNTY without the prior written consent of the COUNTY. Said consent shall not be unreasonably withheld, and approval by the COUNTY may be assumed in the event no adverse comments are received in writing two (2) weeks after submittal.
 - 17.1.3 CONTRACTOR may, without prior written permission of COUNTY, indicate in its proposals and sales material that it has been awarded a contract to provide services, provided, however, that the requirements of this provision shall apply.

18.0 COMPLIANCE WITH APPLICABLE LAWS

- 18.1 CONTRACTOR shall conform to and abide by all applicable Municipal, County, State and Federal laws and regulations, court rules, and ordinances, insofar as the same or any of them are applicable. This includes compliance with mandatory standards and policies relating to energy efficiency in the State Energy Conservation Plan (Title 24, California Administrative Code) and compliance with Section 306 of the Clean Air Act (42 USC 1857(h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738 and Environmental Protection Agency regulations (40 CFR Part 15). Insofar as permits and/or licenses are required for the prescribed services and/or any construction

authorized herein, the same must be obtained from the regulatory agency having jurisdiction there over.

- 18.2 Failure by CONTRACTOR to comply with such laws and regulations shall be a material breach of this Agreement and may result in termination of this Agreement.
- 18.3 CONTRACTOR agrees to indemnify and hold COUNTY harmless from any loss, damage or liability resulting from a violation on the part of the CONTRACTOR, its employees, agents or subcontractors of such laws, regulations, rules, policies, standards or ordinances as described in Section 18.1.

19.0 COMPLIANCE WITH CIVIL RIGHTS LAWS

CONTRACTOR hereby assures that it will comply with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1973, where applicable, and Title 43, Part 17 of the Code of Federal Regulations Subparts A and B, to the end that no persons shall on the grounds of race, creed, color, national origin, political affiliation, marital status, sex, age, or handicap be subjected to discrimination under the privileges and use granted by this Agreement or under any project, program or activity supported by this Agreement.

20.0 NON-DISCRIMINATION IN EMPLOYMENT

- 20.1 CONTRACTOR certifies and agrees that all persons under its employ, its affiliates, subsidiaries, or holding companies, are and will be treated equally by it without regard to or because of race, religion, color, national origin, political affiliation, marital status, sex, age, or handicap, in compliance with all applicable Federal and State non-discrimination laws and regulations. This includes compliance with Executive Order 11246 entitled "Equal Employment Opportunity," Executive Order 11375 and as supplemented in the Department of Labor Regulations (41 CFR Part 60).
- 20.2 CONTRACTOR shall take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to race, religion, color, national origin, political affiliation, marital status, sex, age, or handicap. Such action shall include but is not limited to the following: employment, upgrading,

demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

- 20.3 CONTRACTOR shall deal with its subcontractors, bidders, or vendors without regard to or because of race, religion, color, national origin, political affiliation, marital status, sex, age, or handicap.
- 20.4 CONTRACTOR shall provide access for COUNTY's representatives to inspect CONTRACTOR's employment records during regular business hours in order to verify compliance with the provisions of this section when so requested by COUNTY.
- 20.5 If COUNTY finds that any of the above provisions have been violated, the same shall constitute a material breach of contract upon which COUNTY may determine to terminate this Agreement. COUNTY reserves the right to determine independently whether the non-discrimination provisions of this Agreement have been violated. In addition, a determination by the California Fair Employment Opportunity Commission that CONTRACTOR has violated State or Federal non-discrimination laws or regulations shall constitute a finding by COUNTY that CONTRACTOR has violated the non-discrimination provisions of this Agreement.
- 20.6 The parties agree that in the event CONTRACTOR violates the non-discrimination provisions of this Agreement, COUNTY shall, at its option, be entitled to a sum of Five Hundred Dollars (\$500.00) pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating this Agreement.

21.0 CLIENT GRIEVANCES

CONTRACTOR shall establish a written procedure to resolve client grievances. At the request of COUNTY's Program Manager, CONTRACTOR shall submit such procedures to COUNTY within five (5) calendar days from date of the request.

22.0 EVENTS OF DEFAULT

22.1 Default for Non-Performance

COUNTY may terminate the whole or any part of this Agreement if either of the following circumstances exist:

- 22.1.1 CONTRACTOR has made a misrepresentation of any required element in the bid/proposal submitted in response to the Invitation for Bids/Request for Proposals, if any, or

22.1.2 CONTRACTOR fails to comply with or perform any provision of this Agreement or fails to make progress so as to endanger performance of any term of this Agreement.

22.2 Default for Insolvency

COUNTY may terminate this Agreement for default for insolvency in the event of the occurrence of any of the following:

22.2.1 Insolvency of CONTRACTOR. CONTRACTOR shall be deemed insolvent if it has ceased to pay its debts in the ordinary course of business or cannot pay its debts as they become due, whether it has filed for bankruptcy or not, and whether insolvent within the meaning of the Federal Bankruptcy Law or not;

22.2.2 The filing of a voluntary petition in bankruptcy;

22.2.3 The appointment of a Receiver or Trustee for CONTRACTOR.

22.2.4 The execution by CONTRACTOR of an assignment for the benefit of creditors.

22.3 Other Events of Default

Determination by the COUNTY, the State Fair Employment Commission, or the Federal Equal Employment Opportunity Commission of discrimination having been practiced by CONTRACTOR in violation of State and/or Federal laws thereon.

23.0 TERMINATION FOR DEFAULT

23.1 Upon determining the existence of any one or more of the circumstances heretofore described in Section 22.0 Events of Default, this Agreement may be subject to termination either immediately or within such longer time period as noticed by COUNTY.

23.2 In the event COUNTY terminates this Agreement in whole or in part as provided in this Agreement, COUNTY may procure, upon such terms and in such manner as COUNTY may deem appropriate, services similar to those previously provided by CONTRACTOR. Any excess cost, as determined by the COUNTY, arising from procurement of services under this Section 23.2, over and above the contract sum, shall be charged against the CONTRACTOR and/or its sureties.

23.3 The remedies reserved to COUNTY herein shall be cumulative and in addition to any other remedies provided in law or equity.

23.4 In the event that, following services of the Notice of Termination of this Agreement under the provisions of this Agreement, it is determined for any reason that CONTRACTOR was not in default under the provisions

of this Agreement or that the default was excusable under provisions of this Agreement, a correction of the Notice of Termination shall be issued, and the rights and obligations of the parties shall be the same as if the Notice of Termination had not been issued.

24.0 TERMINATION FOR IMPROPER CONSIDERATION

- 24.1 COUNTY may, by written notice to CONTRACTOR, immediately terminate the right of CONTRACTOR to proceed under this Agreement if it is found that consideration, in any form, was offered or given by CONTRACTOR, either directly or through an intermediary, to any COUNTY officer, employee or agent with the intent of securing the Agreement or securing favorable treatment with respect to the award, amendment or extension of the Agreement or the making of any determinations with respect to the CONTRACTOR's performance pursuant to the Agreement. In the event of such termination, COUNTY shall be entitled to pursue the same remedies against CONTRACTOR as it could pursue in the event of a default by the CONTRACTOR.
- 24.2 CONTRACTOR shall immediately report any attempt by a COUNTY officer or employee to solicit such improper consideration. The report shall be made either to the COUNTY manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6861.
- 24.3 Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

25.0 TERMINATION FOR CONVENIENCE

- 25.1 The performance of services under this Agreement may be terminated in whole or part when such action is deemed by COUNTY to be in its best interest. Termination of services hereunder shall be effected by delivery to CONTRACTOR of a thirty (30) day advance notice of termination specifying the extent to which performance of services under this Agreement is terminated and the date upon which such termination becomes effective.
- 25.2 After receipt of a notice of termination and except as otherwise directed by COUNTY, the CONTRACTOR shall:
 - 25.2.1 Stop services under this Agreement on the effective date of termination.
 - 25.2.2 To the extent possible, continue to, as required by this Agreement perform until the effective date of termination.
- 25.3 After receipt of a notice of termination, CONTRACTOR shall submit to COUNTY in the form and with the certification as may be prescribed by

COUNTY, its termination claim and invoice. Such claim and invoice shall be submitted promptly. COUNTY will not accept any such invoice submitted later than three (3) months from the effective date of termination. Upon failure of CONTRACTOR to submit its termination claim and invoice within the time allowed, COUNTY may determine, on the basis of information available to COUNTY, the amount, if any, due to CONTRACTOR in respect to the termination, and such determination shall be final. After such determination is made, COUNTY shall pay CONTRACTOR the amount so determined as full and complete satisfaction of all amounts due CONTRACTOR under this Agreement for any terminated services.

- 25.4 Subject to the provisions of Section 25.3 above, COUNTY and CONTRACTOR shall make a good faith attempt to agree upon an amount due to CONTRACTOR for any terminated services following the total or partial termination of services pursuant to this Agreement. If after a good faith effort, an amount due CONTRACTOR is not agreed upon, COUNTY shall determine the amount due CONTRACTOR by assessing the contract value for similar services provided herein to all documented services, which CONTRACTOR or its subcontractor(s) has satisfactorily provided. COUNTY shall pay the agreed upon or determined amount, provided that such amount shall not exceed the Maximum Contract Sum under this Agreement as reduced by the amount of payments otherwise made and as further reduced by the amount potentially due for services not terminated.

26.0 CONTRACTOR RESPONSIBILITY AND DEBARMENT

26.1 Contractor Responsibility and Debarment

26.1.1 A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the contract. It is the COUNTY's policy to conduct business only with responsible Contractors.

26.1.2 The CONTRACTOR is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the COUNTY acquires information concerning the performance of the CONTRACTOR on this or other contracts which indicates that the CONTRACTOR is not responsible, the COUNTY may, in addition to other remedies provided in the contract, debar the CONTRACTOR from bidding on COUNTY contracts for a specified period of time not to exceed three years, and terminate any or all existing contracts the CONTRACTOR may have with the COUNTY.

26.1.3 The COUNTY may debar the CONTRACTOR if the Board of Supervisors finds, in its discretion, that the CONTRACTOR has done any of the following: (1) violated any term of a contract with the COUNTY; (2) committed any act or omission which negatively

reflects on the CONTRACTOR's quality, fitness or capacity to perform a contract with the COUNTY or any other public entity, or engaged in a pattern or practice which negatively reflects on same; (3) committed an act or offense which indicates a lack of business integrity or business honesty; or (4) made or submitted a false claim against the COUNTY or any other public entity.

26.1.4 If there is evidence that the CONTRACTOR may be subject to debarment, the Department will notify the CONTRACTOR in writing of the evidence which is the basis for the proposed debarment and will advise the CONTRACTOR of the scheduled date for a debarment hearing before the Contractor Hearing Board.

26.1.5 The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The CONTRACTOR and/or the CONTRACTOR's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a proposed decision, which shall contain a recommendation regarding whether the CONTRACTOR should be debarred, and, if so, the appropriate length of time of the debarment. If the CONTRACTOR fails to avail itself of the opportunity to submit evidence to the Contractor Hearing Board, the CONTRACTOR may be deemed to have waived all rights of appeal.

26.1.6 A record of the hearing, the proposed decision and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny or adopt the proposed decision and recommendation of the Hearing Board.

26.1.7 These terms shall also apply to subcontractors of COUNTY contractors.

27.0 LIMITATION OF COUNTY'S OBLIGATION DUE TO NON-APPROPRIATION OF FUNDS

27.1 COUNTY's obligation is payable only and solely from funds appropriated for the purpose of this Agreement.

27.2 All funds for payment are conditioned upon the County Board of Supervisors' appropriation of sufficient funds for this purpose. Payments during subsequent fiscal year periods are dependent upon similar Board of Supervisors' action.

27.3 In the event the County Board of Supervisors does not allocate sufficient funds for the next succeeding fiscal year to meet the CONTRACTOR's anticipated obligations to providers under contracts, then services may be: (1) terminated in their entirety; or (2) reduced in accordance with

available funding as deemed necessary by the COUNTY. COUNTY shall notify CONTRACTOR in writing of any such non-allocation of funds at the earliest possible date.

28.0 CONFLICT OF INTEREST

- 28.1 No COUNTY employee whose position in COUNTY enables such employee to influence the award or administration of this Agreement or any competing Agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by CONTRACTOR herein, or have any other direct or indirect financial interest in this Agreement. No officer or employee of COUNTY who may financially benefit from the provision of services hereunder shall in any way participate in COUNTY's approval, or ongoing evaluation of such services, or in any way attempt to unlawfully influence COUNTY's approval or ongoing evaluation of such services.
- 28.2 CONTRACTOR shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. CONTRACTOR warrants that it is not now aware of any facts which created a conflict of interest. If CONTRACTOR hereafter becomes aware of any facts which might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to COUNTY. Full written disclosure shall include, without limitation, identification of all persons implicated, and complete description of all relevant circumstances.

29.0 EMPLOYEE BENEFITS AND TAXES

- 29.1 CONTRACTOR shall be solely responsible for providing to, or on behalf of its employees, all legally required salaries, wages, benefits, or other compensation.
- 29.2 COUNTY shall have no liability or responsibility for any taxes, including, without limitation, sales, income, employee withholding and/or property taxes which may be imposed in connection with or resulting from this Agreement or CONTRACTOR's performance hereunder.

30.0 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT

CONTRACTOR shall notify its employees and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in

accordance with the requirements set forth in Internal Revenue Services Notice 1015 (Exhibit L).

31.0 CONFIDENTIALITY

CONTRACTOR shall maintain the confidentiality of all records, including but not limited to COUNTY records and client records in accordance with all applicable federal, state and local laws, regulations, ordinances and directives regarding confidentiality. CONTRACTOR shall inform all of its officers, employees and agents providing services hereunder of the confidentiality provisions of this Agreement. All employees of CONTRACTOR who have access to confidential records and data must sign and adhere to the attached "Employee Acknowledgment and Confidentiality Agreement", Exhibit G. CONTRACTOR shall notify COUNTY of any attempt to obtain confidential records through the legal process.

32.0 CONTRACT ENFORCEMENT, QUALITY ASSURANCE PLAN, MONITORING, AND REVIEW

- 32.1 The Director shall be responsible for the enforcement of this Agreement on behalf of COUNTY and shall be assisted therein by those officers and employees of COUNTY having duties in connection with the administration thereof. Director hereby reserves the right to assign such personnel as are needed to serve as Program Manager in order to inspect and review CONTRACTOR's performance of and compliance with all contractual services, duties, obligations, responsibilities, administrative procedures and staffing as set forth in this Agreement.
- 32.2 CONTRACTOR hereby agrees to cooperate with the Director, Program Manager, and any duly authorized State or Federal government representative, in the review and monitoring of CONTRACTOR's program, records and procedures at any reasonable time.
- 32.3 The COUNTY or its agent will evaluate CONTRACTOR's performance under this Agreement on not less than an annual basis. Such evaluation will include assessing CONTRACTOR's compliance with all contract terms and performance standards. CONTRACTOR deficiencies which COUNTY determines are severe or continuing and that may place performance of the Agreement in jeopardy if not corrected will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by the COUNTY and CONTRACTOR. If improvement does not occur consistent with the corrective action measures, COUNTY may terminate this Agreement or impose other penalties as specified in this Agreement.

32.4 At the request of COUNTY, CONTRACTOR, or its appropriate representative, shall attend meetings and/or training sessions, as determined by COUNTY.

32.5 CONTRACTOR shall prepare and submit to COUNTY's Program Manager a written semi-annual report describing the services provided throughout each Fiscal Year. The CONTRACTOR's semi-annual report shall include, but not be limited to:

32.5.1 Description of services and/or deliverables rendered during the period, dollar amount of services rendered during the period, dollar balance remaining under the Agreement, and any difficulties encountered that could jeopardize the completion of the project or milestones or deliverables within the schedule.

33.0 EMPLOYMENT ELIGIBILITY VERIFICATION

CONTRACTOR warrants that it fully complies with all Federal statutes and regulations regarding employment of aliens and others, and that all its employees performing services hereunder meet the citizenship or alien status requirements contained in Federal statutes and regulations. CONTRACTOR shall obtain, from all covered employees performing services hereunder, all verification and other documentation of employment eligibility status required by Federal statutes and regulations as they currently exist and as they may be hereafter amended. CONTRACTOR shall retain such documentation of all covered employees for the period prescribed by law. CONTRACTOR shall indemnify, defend, and hold harmless, the COUNTY, its officers and employees from employer sanctions and any other liability which may be assessed against CONTRACTOR or COUNTY in connection with any alleged violation of Federal statutes or regulations pertaining to the eligibility for employment of persons performing services under this Agreement.

34.0 CRIMINAL CLEARANCES

34.1 For the safety and welfare of the children to be served under this Agreement, CONTRACTOR agrees, as permitted by law, to ascertain arrest and conviction records for all current and prospective employees, independent contractors, volunteers or subcontractors who may come in contact with children in the course of their work, volunteer activity or performance of the subcontract and shall maintain such records in the file of each such person.

34.2 CONTRACTOR shall immediately notify COUNTY of any arrest and/or subsequent conviction, other than for minor traffic offenses, of any employee, independent contractor, volunteer staff or subcontractor who may come in contact with children while providing services under this Agreement when such information becomes known to CONTRACTOR.

34.3 CONTRACTOR agrees not to engage or continue to engage the services of any person convicted of any crime involving harm to children,

or any crime involving conduct inimical to the health, morals, welfare or safety of others, including but not limited to the offenses specified in Health and Safety Code, Section 11590 (offenses requiring registration as a controlled substance offender) and those defined in the following Penal Code Sections or any other existing or future Penal Code sections which address such crimes:

SECTION	TITLE
220	Assault with intent to commit mayhem, rape, unlawful sodomy, unlawful oral copulation, rape in concert with another, lascivious acts upon a child, or forcible acts of sexual penetration.
243.4	Sexual battery.
245	Assault with a deadly weapon or force likely to produce great bodily injury.
261.5	Unlawful sexual intercourse with a minor.
264.1	Voluntary acting in concert with another person, by force or violence and against the will of the victim, committed rape, rape of spouse or forcible act of sexual penetration either personally or by aiding and abetting the other person.
272	Causing, encouraging or contributing to delinquency of person under age 18.
273a	Great bodily harm or death to child; endangerment of person or health.
273ab	Assault resulting in death of child under 8 years of age.
273d	Infliction of corporal punishment or injury on child resulting in traumatic condition.
273g	Degrading, immoral or vicious practices in the presence of children.
273.5	Infliction of corporal punishment or injury on spouse, former spouse, cohabitant, former cohabitant or the mother or father of his or her child resulting in traumatic condition.
286	Sodomy.

288	Lewd or lascivious acts upon the body of a child under age 14.
288a	Unlawful Oral copulation.
289	Forcible acts of sexual penetration against the victim's will.
290	Sex offenders required to register with the chief of police, sheriff or police of a campus of University of California, California State University or community college.
314	Indecent exposure.
368(b)	Great bodily harm or death to elder or dependent adult; Endangerment of person or health or elder or dependent adult.
647 (a) & (d)	Disorderly conduct relating to lewd/behavior/prostitution.
647.6	Annoyance of or molesting a child under age 18.
667.5(c)	Violent felony as defined in California Penal Code Section 667.5 (c)

35.0 CHILD SUPPORT COMPLIANCE PROGRAM

35.1 CONTRACTOR's Warranty of Adherence to County's Child Support Compliance Program:

CONTRACTOR acknowledges that COUNTY has established a goal of ensuring that all individuals who benefit financially from COUNTY through contract are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon COUNTY and its taxpayers.

As required by County's Child Support Compliance Program (County Code Chapter 2.200) and without limiting CONTRACTOR's duty under this contract to comply with all applicable provisions of law, CONTRACTOR warrants that it is now in compliance and shall during the term of this contract maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or District Attorney Notice of Wage and Earnings Assignment for Child and Spousal Support, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

35.2 Termination for Breach of Warranty to Maintain Compliance with County's Child Support Compliance Program:

35.2.1 Failure of CONTRACTOR to maintain compliance with the requirements set forth in Section 35.1 "Contractor's Warranty of Adherence to County's Child Support Compliance Program" shall constitute a default by CONTRACTOR under this contract. Without limiting the rights and remedies available to COUNTY under any other provision of this contract, failure to cure such default within ninety (90) days of notice by the Los Angeles County District Attorney shall be grounds upon which the County Board of Supervisors may terminate this contract pursuant to Section 23.0, "Termination for Default."

35.3 CONTRACTOR's Acknowledgment of County's Commitment to Child Support Enforcement.

CONTRACTOR acknowledges that COUNTY places a high priority on enforcement of child support laws and the apprehension of child support evaders. CONTRACTOR understands that it is COUNTY's policy to encourage all COUNTY Contractors to voluntarily post County's "L.A.'s Most Wanted Delinquent Parents" poster in a prominent position at CONTRACTOR's place of business. County's District Attorney will supply CONTRACTOR with the poster to be used.

36.0 FORMER FOSTER YOUTH CONSIDERATION

36.1 Should CONTRACTOR require additional or replacement personnel after the effective date of this Agreement to perform services set forth herein, CONTRACTOR shall give consideration (after COUNTY employees, and GAIN participants as described in Sections 37.0 and 38.0, respectively) for any such position(s) to qualified former foster youth. CONTRACTOR shall notify COUNTY of any new or vacant positions(s) within CONTRACTOR's firm by sending via U.S. mail or facsimile, a list denoting any position(s) for which hiring is anticipated to:

Bureau Chief
Bureau of Children and Family Services
Department of Children and Family Services
425 Shatto Place, Room 307
Los Angeles, California 90020

FAX: (213) 383-3773

36.2 The notice sent by CONTRACTOR must indicate the position(s)/title(s) for vacant or new employment opportunity, description of same, requirements/qualifications for position(s), anticipated pay rate or salary schedule, the location where application(s) requests for application(s)

may be sent, final date of acceptance for applications and any special circumstances relevant to the hiring procedure for said position(s).

- 36.3 CONTRACTOR is exempt from the provisions of this Section if it is a government entity.

37.0 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFFS

- 37.1 Should CONTRACTOR require additional or replacement personnel after the effective date of this Agreement to perform the services set forth herein, CONTRACTOR shall give first consideration for such employment openings to qualified permanent COUNTY employees who are targeted for layoff or qualified former COUNTY employees who are on a reemployment list during the term of this Agreement.
- 37.2 CONTRACTOR shall notify COUNTY of any new or vacant position(s) within the CONTRACTOR's personnel who perform services set forth herein, by sending via U.S. mail or facsimile, a list denoting any positions(s) for which hiring is anticipated to:

Department of Human Resources
500 West Temple Street, Room 588
Los Angeles, California 90012

FAX: (213) 680-2450

- 37.3 CONTRACTOR is exempt from the provisions of this Section if it is a governmental entity.

38.0 CONSIDERATION OF HIRING GAIN PARTICIPANTS

- 38.1 Should CONTRACTOR require additional or replacement personnel or any other position for which applications are being accepted after the effective date of this Agreement, CONTRACTOR shall give consideration for any such employment openings to participants in the County's Department of Public Social Services' Greater Avenues for Independence (GAIN) Program who meet CONTRACTOR's minimum qualifications for the open position.
- 38.2 CONTRACTOR shall send notices to the COUNTY's Department of Public Social Services offices(s) located nearest to the job location at the following addresses:

Region I – West County
5200 W. Century Blvd.
Los Angeles, CA 90045

Region II – West San
Fernando Valley
14355 Roscoe Blvd.
Panorama City, CA 91042

Santa Clarita Sub-Office

Palmdale Sub-Office

27233 Camp Plenty Road
Canyon County, CA 91351

1050 E. Palmdale Blvd., Suite
204
Palmdale, CA 93550

Region III – San Gabriel Valley
3216 Rosemead Blvd.
El Monte, CA 91731

GAIN Cal-Learn Branch
3220 Rosemead Blvd.
El Monte, CA 91731

Region IV – Central and West
County
2910 W. Beverly Blvd.
Los Angeles, CA 90057

Exposition Park Sub-Office
3965 S. Vermont
Los Angeles, CA 90037

Region V – South County
2959 Victoria Street
Rancho Dominguez, CA 90221

Region VI – Southeast County
5460 Bandini Blvd.
City of Bell, CA 90201

Region VII – East San Fernando
County
3307 N. Glenoaks Blvd.
Burbank, CA 91504

- 38.3 The notice sent by CONTRACTOR must indicate the position(s)/title(s) for vacant or new employment opportunity, description of same, requirements/qualifications for position(s), anticipated pay rate or salary schedule, the location where applications/request(s) for applications are being received, final date of acceptance for applications and any special circumstances relevant to the hiring procedure for said position(s).
- 38.4 CONTRACTOR is exempt from the provisions of this Section if it is a governmental entity.

39.0 COUNTY LOBBYIST

CONTRACTOR and each County lobbyist or County lobbying firm as defined in Los Angeles County Code Section 2.160.010, retained by CONTRACTOR, shall fully comply with Chapter 2.160. Failure on the part of CONTRACTOR or

any County lobbyist or County lobbying firm retained by CONTRACTOR to fully comply with the County Lobbyist Ordinance shall constitute a material breach of this Agreement upon which COUNTY may immediately terminate this Agreement.

40.0 NOTICE OF DELAYS

Except as otherwise provided herein, when either party to this Agreement has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Agreement, that party shall, within three (3) working days, give written notice thereof, including all relevant information with respect thereto, to the other party.

41.0 USE OF RECYCLED-CONTENT PAPER

Consistent with the Board of Supervisor's policy to reduce the amount of solid waste deposited at the COUNTY landfills, the CONTRACTOR agrees to use recycled-content paper to the maximum extent possible on the Project.

42.0 PROPRIETARY RIGHTS

42.1 COUNTY and CONTRACTOR agree that all software, materials, data and information developed under and/or used in connection with this Agreement shall become the sole property of COUNTY, provided that CONTRACTOR may retain possession of all working papers prepared by CONTRACTOR. During and subsequent to the term of this Agreement, COUNTY shall have the right to inspect any and all such working papers, make copies thereof, and use the working papers and the information contained therein.

42.2 Any materials, data and information not developed under this Agreement, which CONTRACTOR considers to be proprietary and confidential, shall be plainly and prominently marked by CONTRACTOR as "TRADE SECRET," "PROPRIETARY," or "CONFIDENTIAL."

42.3 COUNTY will use reasonable means to ensure that CONTRACTOR's proprietary and confidential materials, data and information are safeguarded and held in confidence. However, COUNTY will notify CONTRACTOR of any Public Records request for items described in Section 42.2. COUNTY agrees not to reproduce or distribute such materials, data and information to non-COUNTY entities without the prior written permission of CONTRACTOR.

42.4 Notwithstanding any other provision of this Agreement, COUNTY shall not be obligated in any way under Section 42.3 for:

42.4.1 Any material, data and information not plainly and prominently marked with restrictive legends as set forth in Section 42.2;

42.4.2 Any materials, data and information covered under Section 42.1;
and

42.4.3 Any disclosure of any materials, data and information which
COUNTY is required to make under the California Public Records
Act or otherwise by law.

42.5 CONTRACTOR shall protect the security of and keep confidential all
materials, data and information received or produced under this
Agreement. Further, CONTRACTOR shall use whatever security
measures are necessary to protect all such materials, data and
information from loss or damage by any cause, including, but not limited
to, fire and theft.

42.6 CONTRACTOR shall not disclose to any party any information
identifying, characterizing or relating to any risk, threat, vulnerability,
weakness or problem regarding data security in COUNTY's computer
systems or to any safeguard, countermeasure, contingency plan, policy
or procedure for data security contemplated or implemented by
COUNTY, without COUNTY's prior written consent.

42.7 The provisions of Sections 42.4, 42.5, and 42.6 shall survive the
expiration or termination of this Agreement.

43.0 FIXED ASSETS

Title to all fixed assets purchased with COUNTY funds designated by the
COUNTY for that purpose under this Agreement shall remain with COUNTY. A
"Fixed Asset" is defined hereunder as any equipment costing Five hundred
dollars (\$500.00) or more, with a useful life of more than two (2) years. Such
assets shall be maintained and repaired by CONTRACTOR during the term of
this Agreement. CONTRACTOR shall provide an accounting of such assets at
the termination or expiration of this Agreement and shall deliver same to
COUNTY upon COUNTY's written request. CONTRACTOR shall have the
option upon the expiration or termination of the Agreement to acquire such
assets at a price to be mutually agreed upon by COUNTY and CONTRACTOR.

44.0 CHILD ABUSE PREVENTION REPORTING

44.1 CONTRACTOR agrees that the safety of the child will always be the first
priority. To ensure the safety of children, CONTRACTOR will
immediately notify COUNTY and the Child Abuse Hotline whenever
CONTRACTOR reasonably suspects that a child has been a victim of
abuse and/or is in danger of future abuse. The CONTRACTOR will
remain with the child if imminent risk is present.

44.2 CONTRACTOR shall ensure that all known or suspected instances of child abuse are reported to a child protective agency as defined in Section 11164, et. Seq. of the Penal Code. This responsibility shall include:

44.2.1 A requirement that all employees, consultants, or agents performing services under this Agreement who are required by Penal Code, Section 11166(a), to report child abuse, sign a statement that he or she knows of the reporting requirements and will comply with them.

44.2.2 The establishment of procedures to ensure reporting even when employees, consultants or agents who are not required to report child abuse under California Penal Code Section 11166, gain knowledge of, or reasonably suspect that a child had been a victim of abuse or neglect.

44.2.3 The assurance that all employees of CONTRACTOR and subcontractors understand that the safety of the child is always the first priority.

45.0 COMMUNITY BUSINESS ENTERPRISES PROGRAM

In accordance with COUNTY policy, CONTRACTOR has submitted a true and correct copy of the Certification Application which is attached as Exhibit F.

46.0 AUTHORIZATION WARRANTY

CONTRACTOR represents and warrants that the signatory to this Agreement is fully authorized to obligate CONTRACTOR hereunder and that all corporate acts necessary to the execution of the Agreement have been accomplished.

47.0 DISPUTE RESOLUTION PROCEDURE

47.1 CONTRACTOR and COUNTY agree to act promptly and diligently to mutually resolve any disputes which may arise with respect to this Agreement. All such disputes shall be subject to the provisions of this Section 47.0

47.2 CONTRACTOR and COUNTY agree that, the existence and details of a dispute notwithstanding, both parties shall continue without delay their performance hereunder, except for any performance which COUNTY determines should be delayed as a result of such dispute. COUNTY shall continue to pay sums not in dispute, during any such period of continued performance.

47.3 In the event of any dispute between the parties with respect to this Agreement, CONTRACTOR and COUNTY shall submit the matter to

their respective Program Managers for the purpose of endeavoring to resolve such dispute.

- 47.4 In the event that the Program Managers are unable to resolve the dispute within a reasonable time not to exceed five (5) working days from the date of submission of the dispute to them, then the matter shall immediately be submitted to CONTRACTOR's Assistant to Executive Director and COUNTY's Regional Administrator for further consideration and discussion to attempt to resolve the dispute.
- 47.5 In the event that CONTRACTOR's Assistant to Executive Director and COUNTY's Regional Administrator are unable to resolve the dispute within a reasonable time not to exceed five (5) days from the date of submission of the dispute to them, then the matter shall immediately be submitted to CONTRACTOR's Executive Director and to the Director of DCFS for further consideration and discussion to attempt to resolve the dispute.
- 47.6 All disputes utilizing this dispute resolution procedure shall at each and every level of escalation be documented in writing by each party and shall state the specifics of each alleged dispute and all actions taken. The parties shall act in good faith to resolve all disputes. At all levels described in this Section 47.0, the efforts to resolve a dispute shall be undertaken by conference between the parties' respective representatives, either orally (by face-to-face meeting or by telephone), or in writing (by exchanging of correspondence).
- 47.7 Notwithstanding any other provision of this Agreement, COUNTY's right to terminate this Agreement pursuant to Section 23.0, Termination for Default, Section 25.0, Termination for Convenience, or any other termination provision hereunder, and COUNTY's right to seek injunctive relief to enforce the provisions of Section 42.0, Proprietary Rights and Section 31.0, Confidentiality, shall not be subject to this Section 47.0, Dispute Resolution Procedure.

48.0 INTERPRETATION OF CONTRACT

48.1 Validity

The invalidity, unenforceability, or illegality of any provision of this Agreement shall not render the other provisions thereof invalid, unenforceable, or illegal.

48.2 Governing Laws, Jurisdiction and Venue

This Agreement shall be construed in accordance with and governed by the laws of the State of California. CONTRACTOR agrees and consents

to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the COUNTY of Los Angeles, California.

48.3 Waiver

Any waiver by COUNTY of any breach of any one or more of the covenants, conditions, terms and agreements herein contained shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement herein contained, nor shall failure on the part of COUNTY to require exact, full and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as in any manner changing the terms of this Agreement or stopping COUNTY from enforcing the full provisions thereof.

**COUNTY OF LOS ANGELES
DEPARTMENT OF CHILDREN AND FAMILY SERVICES**

**AGREEMENT FOR
COMPTON DEMONSTRATION PROJECT FOR
ENHANCED COMMUNITY FAMILY PRESERVATION SERVICES**

IN WITNESS WHEREOF, the Board of Supervisors of the COUNTY of Los Angeles has caused this Agreement to be subscribed by its Chair, and the seal of such Board to be hereto affixed and attested by the Executive Office thereof, and CONTRACTOR has caused this Agreement to be subscribed in its behalf by its duly authorized officer on the day, month and year first above written. The persons signing on behalf of the CONTRACTOR warrant under penalty of perjury that they are authorized to bind the CONTRACTOR.

COUNTY OF LOS ANGELES

By _____
Chair, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS
Executive Officer-Clerk of the
Los Angeles County
Board of Supervisors

By _____

THE SHIELDS FOR FAMILIES PROJECT

By _____

Name _____

Title _____

By _____

Name _____

Title _____

Tax Identification Number

APPROVED AS TO FORM:

BY THE OFFICE OF COUNTY COUNSEL
LLOYD W. PELLMAN, County Counsel

BY _____
Deputy County Counsel

Exhibit A
Statement of Work

Exhibit A

STATEMENT OF WORK
ENHANCED COMMUNITY FAMILY PRESERVATION SERVICES

1.0 GENERAL REQUIREMENTS

The CONTRACTOR shall provide all personnel, labor, materials, equipment and supervision necessary for the provision of enhanced community family preservation services as defined in this Statement of Work.

2.0 INTRODUCTION

The Department of Children and Family Services (DCFS) has developed significant partnerships with Community Based Agencies through the Family Preservation Program. Family Preservation has had a tremendous impact on the prevention of out-of-home placements by providing intensive community services to children and families when children are at risk of being abused and/or neglected.

DCFS had previously received a grant of \$97,613 from the Edna McConnel Clark Foundation to develop a pilot demonstration project known as the "Compton Demonstration Project". At the conclusion of the foundation grant and due to the program's success, the Compton Demonstration Pilot Project was funded by a Federal Community-Based Family Resource Grant of \$96,947 administered by the California Department of Social Services (CDSS) Office of Child Abuse Prevention. The project provided services to families with unsubstantiated findings of child abuse/neglect but were at high risk of abuse/neglect without intensive prevention services.

Compton was selected as the site for the pilot program because it was one of the first communities to see a decline in the number of children going into out-of-home care. Two community agencies selected for this project, Shields for Families Project and Equipoise, Inc. were located in the City of Compton. Both agencies have been a stabilizing force in the City of Compton for a number of years. The pilot project was effective from June 15, 1999 through September 30, 2000. The \$96,947 CDSS Office of Child Abuse Prevention grant was divided equally between the two agencies. Both agreements have expired. In addition, as of June 2001, Equipoise, Inc. no longer provides family preservation services.

Subsequently, the Office of Child Abuse Prevention awarded DCFS an additional grant in the amount of \$114,086 effective October 1, 2001 through June 30, 2002 to provide enhanced community family preservation services. Being the sole provider of family preservation services in the City of Compton, Shields for Families Project will be funded with the Community Based Family Resource and Support grant for the continued provision of enhanced community family preservation services.

The Statement of Work requires that Shields for Families Project take referrals from the DCFS Region VII Lakewood office, and provide services such as in-

home counseling, teaching and demonstration services and transportation services to these referred families in Compton and adjacent communities.

3.0 GOALS

This Statement of Work is based on the following goals:

- 3.1 To protect the health and safety of the child.
- 3.2 To provide community-based resources to the children and families voluntarily under the supervision of DCFS.
- 3.3 To maintain the confidentiality of information regarding children and their families voluntarily under the care and supervision of DCFS.
- 3.4 To be sensitive to the diversity in backgrounds of the children voluntarily under the supervision of DCFS.

4.0 OBJECTIVE

The methodology for providing the deliverables under this Statement of Work should be based on the following objective:

- 4.1 To prevent children from being abused and/or neglected and keep them out of the child protective services system if it is safe to do so.
- 4.2 To utilize resources from already established Community Services Networks to provide needed services to children and families that could prevent child abuse and neglect.
- 4.3 To involve Community Service Networks at the front end of child protective services cases, when appropriate, to get community-based agencies involved in child protective services.
- 4.4 To utilize the CONTRACTOR's existing Community Advisory Council to assess the viability and strategies of child abuse prevention in their communities.

5.0 AGREEMENT MANAGEMENT

Overall coordination and implementation between CONTRACTOR and COUNTY shall be through COUNTY Program Manager. The COUNTY Program Manager shall administer this Agreement, monitor CONTRACTOR's activities and ensure that CONTRACTOR meets or exceeds the Agreement requirements.

- 5.1 COUNTY will assign a Program Manager for this Agreement.

- 5.2 CONTRACTOR agrees that COUNTY Program Manager will have the authority to inspect any and all of CONTRACTOR's work at any time. The purpose of such inspections will be to verify operation of the program as reported by CONTRACTOR and to ensure that the program is in compliance with requirements of the Statement of Work. Deviations from these requirements or Agreement provisions shall be immediately corrected by CONTRACTOR.
- 5.3 For the term of this Agreement, the COUNTY Program Director shall be Kathee Saito.
- 5.4 For the term of this Agreement, the COUNTY Program Manager shall be Rhelda Shabazz.
- 5.5 For the term of this Agreement, the CONTRACTOR Project Director shall be Kathryn Icenhower.
- 5.6 For the term of this Agreement, the CONTRACTOR Project Manager shall be Phillip Erlich.
- 5.7 COUNTY will give CONTRACTOR reasonable access to personnel, pertinent documentation, and any additional information required for the performance of work pursuant to this Agreement. CONTRACTOR shall hold all such information in confidence pursuant to provisions of Section 31.0, Confidentiality, in the body of this Agreement and Exhibit G, Employee Acknowledgement and Confidentiality Agreement.

6.0 CONTRACTOR PERSONNEL REQUIREMENTS

CONTRACTOR shall be responsible for securing staff with sufficient experience and expertise to fulfil the Agreement requirements as follows:

- 6.1 There shall be two (2) In-Home Outreach Counselors, who are also the case managers. They shall provide in-home counseling to the referred families.
- 6.2 The case managers will have a Master's degree in counseling, social work or related field, or a Bachelor's degree in Sociology, Psychology, or related field and two years experience with high risk families.
- 6.3 The case managers will be bilingual in Spanish.

7.0 NEEDS ASSESSMENTS AND CASE MANAGEMENT SERVICES

CONTRACTOR shall:

- 7.1 Provide assessments of inconclusive child abuse referrals to determine the need for family preservation services.
 - 7.1.1 The assessment will include (1) risk of future harm to children, (2) family function, (3) child well being and development and, (4) ability of the family to accept community resources.
- 7.2 Review all referrals from DCFS Lakewood office, and assess the need for family preservation services.
 - 7.2.1 Schedule initial case conference with the referred family, and develop a family service plan, in the form of a contract signed by all parties, at the initial case conference.
- 7.3 The In-Home Counselor or case manager conducts in-home outreach counseling to the family.
- 7.4 Provide in-home counseling services based on the Community Services Network staff assessments and recommendations of DCFS.
 - 7.4.1 The case manager will conduct counseling sessions in the home of the families from one (1) to five (5) times per week. Each session is one hour long.
 - 7.4.2 The case manager will carry 15 cases at a time and service 55 families over the course of the agreement.
 - 7.4.3 In-home counseling sessions consist of the case manager meeting with the family in their home environment. The activities performed by the case manager are assessing child's/families' needs, developing a service plan, referral and follow up with linkage services, monitoring progress in achieving service plan objectives and ensuring that all services specified in the case plan are met.
 - 7.4.4 The case manager will be supervised by a Licensed Clinical Social Worker who is already on staff.
- 7.5 Conduct Multidisciplinary Case Planning Conference (MCPC) meetings and provide in-home counseling services as determined by the MCPC meeting.
- 7.6 Maintain all records of client(s) involvement in this project and provide DCFS quarterly reports on the status of all cases.

7.6.1 Each family will participate in the project until the objectives, as outlined in the Family Service Plan, are met.

7.6.2 In most cases, the counseling objectives can be realized within a three-month period.

8.0 PROGRAM EVALUATION

8.1 Provide all records and information on each case to COUNTY Program Manager at the end of each quarter.

8.2 Participate with DCFS Interim Program Evaluation and Fiscal Program Evaluations at the conclusion of project.

9.0 PARENT ADVISORY COUNCIL

9.1 Parents will be selected from a pool of parents who have successfully completed the Los Angeles County Family Preservation Program, along with parents from local religious and business organizations, PTAs and Foster Parent groups.

9.2 Parent advisory council will meet at least bi-monthly to discuss services, linkages, quality of services, program ideas, needs and advocacy.

9.3 CONTRACTOR will appoint a minimum of seven (7) council members.

9.4 Parent council meetings will be facilitated by the Project Director.

10.0 CASE CLOSURE AND FOLLOW-UP SERVICES

10.1 The success of the family, and any continuing needs of the family, will be documented in the Discharge Summary, and the Case Manager and the family will discuss any long-term linkages with community services that will continue to support the family.

10.2 The case manager will continue to be in contact with the family at least once each month for three to six months after the discharge conference.

11.0 SYSTEM-WIDE IMPLEMENTATION

11.1 The long-range plan of the Department is to integrate this program model into the overall family preservation program and budget of the Department, enabling the program to be implemented throughout Los Angeles County.

Exhibit B
Budget

EXHIBIT B

**SHIELDS FOR FAMILIES
BUDGET FOR
ENHANCED COMMUNITY FAMILY PRESERVATION SERVICES**

<u># of FTE</u>	<u>Position/Line Item</u>	<u>Annual Salary# of Mos.</u>	<u>Cost</u>
1.00	Case Manager	46,500	6 23,250
1.00	Case Manager	45,000	6 22,500
2.00	Total Salaries		45,750
	Total Benefits-@	20%	9,150
	Total Salaries & Benefits		54,900

OPERATING COSTS

Insurance	1,500
Facility Costs (Rent, Maintenance, Security)	7,875
Utilities/Communications	3,610
Supplies/Postage	3,260
Mileage	3,600
Parenting/T&D Consultants	17,885
Auxilliary Services	5,000
Parent Council (per Mandate from CDSS)	3,500
Administrative Overhead	12,956
Total Operating Cost	59,186

TOTAL PROGRAM COST 14,086

SHIELDS FOR FAMILIES PROJECT, INC
COMPTON DEMONSTRATION PROJECT
ENHANCED COMMUNITY FAMILY PRESERVATION SERVICES

Justification for Parenting and Teaching and Demonstrating Funds

Consultant funds in the amount of \$17,885 are requested in order to provide parenting sessions and teaching and demonstrating homemaking services to families referred to the program. Based on previous experience in providing family support services in the Compton Demonstration Project, these are the two services that families are most frequently in need of in order to address the concerns in the family and reduce the risk of child abuse and neglect. It is anticipated that \$8,960 will be used for Parenting and \$8,925 will be used for Teaching and Demonstrating Homemaking service, as follows:

Parenting:

224 sessions at \$40 per two hour session. This will allow up to 56 families to have four (4) parenting sessions each.

Teaching and Demonstrating Homemaking:

255 sessions at \$35 per one hour session. This will allow up to 51 families to have five (5) teaching and demonstrating homemaking sessions.

Exhibit C

JOB AND PERFORMANCE REQUIREMENT SUMMARY

JOB AND PERFORMANCE REQUIREMENT SUMMARY

This Exhibit list the required services which will be monitored by the COUNTY during the term of this contract; the required standard of services; the method of county surveillance; the critical for determination of payment; and defines corrective action.

Description of Services

CONTRACTOR agrees to take referrals from the DCFS Region VII Lakewood office, and provide services such as in-home counseling, teaching and demonstration services and transportation services to these referred families in the Compton area.

Standard of Services

CONTRACTOR shall protect the health and safety of the child.

CONTRACTOR shall provide community-based resources to the children and families voluntarily under the supervision of DCFS.

CONTRACTOR shall maintain the confidentiality of information regarding children and their families voluntarily under the care and supervision of DCFS.

CONTRACTOR shall be sensitive to the diversity in backgrounds of the children and families voluntarily under the supervision of DCFS.

CONTRACTOR shall prevent children from being abused and/or neglected and keep them out of the child protective services system if it is safe to do so.

CONTRACTOR shall utilize resources from already established Community Services Networks to provide needed services to children and families that could prevent child abuse and neglect.

CONTRACTOR shall involve Community Service Networks at the front end of child protective services cases when appropriate to get community based agencies involved in child protective services.

CONTRACTOR shall utilize the CONTRACTOR's existing Community Advisory Council to assess the viability and strategies of child abuse prevention in their communities.

CONTRACTOR shall be responsible for securing staff with sufficient experience and expertise to fulfil the Agreement requirements as follows:

There will be two (2) In-Home Outreach Counselor, who is also the case manager, who provides in-home counseling to the referred families.

The case managers will have a Master's degree in counseling, social work or related field, or a Bachelor's degree in Sociology, Psychology, or related field and two years experience with high risk families.

Methods of Delivery

CONTRACTOR shall provide assessments of inconclusive child abuse referrals to determine the need for family preservation services.

The assessment will include (1) risk of future harm to children, (2) family function, (3) child well being and development and, (4) ability of the family to accept community resources.

Review all referrals from DCFS Lakewood office and assess the need for family preservation services.

Schedules initial case conference with the referred family and develop a family service plan, in the form of a contract signed by all parties, at the initial case conference.

The In-Home Counselor or case manager conducts in home outreach counseling to the family.

Provide in-home counseling services based on the Community Services Network staff assessments and recommendations of DCFS.

The case manager will conduct counseling sessions in the home of the families from one (1) to five (5) times per week. Each session is one hour long.

Each case manager will carry 15 cases at a time and service 55 families over the course of the agreement.

In-home counseling sessions consist of the case manager meeting with the family in their home environment. The activities performed by the case manager are assessing child's/families needs, developing a service plan, referral and follow up with linkage services, monitoring progress in achieving service plan objectives and ensuring that all services specified in the case plan are met.

The case manager will be supervised by a Licensed Clinical Social Worker who is already on staff.

Conduct Multidisciplinary Case Planning Conferences (MCPC) meetings and provide in-home counseling services as determined by the MCPC meeting.

Maintain all records of client(s) involvement in this project and provide DCFS quarterly reports on the status of all cases.

Each family will participate in the project until the objectives, as outlined in the Family Service Plan, are met.

In most cases the counseling objectives can be realized within a three-month period.

PARENT ADVISORY COUNCIL

Parents will be selected from a pool of parents who have successfully completed the Los Angeles County Family Preservation Program, along with parents from local religious and business organizations, PTA's and Foster Parent groups.

Parent advisory council will meet at least bi-monthly to discuss services, linkages, quality of services, program ideas, needs and advocacy.

CONTRACTOR will appoint a minimum of seven (7) council members.

Parent council meetings will be facilitated by the Project Director.

The success of the family, and any continuing needs of the family, will be documented in the Discharge Summary and the Case Manager and the family will discuss any long-term linkages with community services that will continue to support the family.

The case manager will continue to be in contact with the family at least once each month for three to six months after the discharge conference.

Criteria for Determination of Payment

For work performed in accordance with the terms of this Agreement as determined by COUNTY, CONTRACTOR shall invoice COUNTY monthly in arrears for contract services at the actual cost incurred in conformance with Exhibit B, Budget and in the format prescribed by the COUNTY (i.e. personnel, employee benefits, supplies and expenses, equipment, travel, and indirect costs.)

Corrective Action

CONTRACTOR agrees that COUNTY Program Manager will have the authority to inspect any and all of CONTRACTOR's work at any time. The purpose of such inspections will be to verify operation of the program as reported by CONTRACTOR and to ensure that the program is in compliance with requirements of the Statement of Work and the Agreement. Deviations from these requirements or Agreement provisions shall be immediately corrected by CONTRACTOR. If dispute cannot be

resolved, Section 47.0, Dispute Resolution Procedure of the Agreement shall be utilized in order to resolve any dispute between CONTRACTOR and COUNTY.

Exhibit D

CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

Exhibit D

CERTIFICATION OF INDEPENDENT PRICE DETERMINATION

CONTRACTOR certifies that the prices submitted in the Budget herein have been Arrived at independently without consultation, communication, or agreement with Any other applicant or competitor for the purpose of restricting competition.

AUTHORIZED SIGNATURE

DATE

Exhibit E

**CONTRACTOR'S EQUAL EMPLOYMENT OPPORTUNITY
(EEO) CERTIFICATION**

Exhibit E

CONTRACTOR'S EQUAL EMPLOYMENT OPPORTUNITY (EEO) CERTIFICATION

CONTRACTOR'S Name: _____

Address: _____

Internal Revenue Service Employer Identification Number: _____

GENERAL

In accordance with Section 4.32.010, County Code, of the County of Los Angeles, the contractor certifies and agrees that all persons employed by such firm, its affiliates, subsidiaries, or holding companies are and will be treated equally by the firm without regard to or because of race, religion, ancestry, national origin, or sex and in compliance with all anti-discrimination laws of the United States of America and the State of California.

Printed Name: _____

Title: _____

Signature: _____

Date: _____

Exhibit F

COMMUNITY BUSINESS ENTERPRISE PROGRAM CERTIFICATION

EXHIBIT F **COMMUNITY BUSINESS ENTERPRISE FORM (CBE)**

{PRIVATE }

FIRM/ORGANIZATION INFORMATION

INSTRUCTIONS: **All Proposers/contractors must have this form on file** with the Department of Children and Family Services to be considered in compliance with federal, state and local contracting regulations. The information requested below is for statistical purposes only. Categories listed below are based on those described in 49 CFR § 23.5. Complete this form as indicated. **Non-profit firms are exempt from completing this form** -- indicate the type of business structure as "Non-profit Organization" and return the form to DCFS.

BUSINESS STRUCTURE: _____ **NON-PROFIT ORGANIZATION**

(Corporation, Partnership, Sole Proprietorship, etc.

Non-profit organizations indicate here and discontinue)

TOTAL NUMBER OF EMPLOYEES IN FIRM (including owners): _____

BREAK DOWN THE NUMBER OF EMPLOYEES (ABOVE), AS FOLLOWS:

{PRIVATE }	OWNERS/PARTNERS/ ASSOCIATE PARTNERS	MANAGERS	STAFF
Black/African American			
Hispanic/Latin American			
Asian American			
American Indian/Alaskan Native			
White			
<i>Based on the above categories, please indicate the total numbers of men and women in the firm:</i>			
Male			
Female			

PLEASE INDICATE BY PERCENTAGE (%) HOW OWNERSHIP OF THE FIRM IS DISTRIBUTED.

{PRIVATE }	Black/ African American	Hispanic/Latin American	Asian American	American Indian/ Alaskan Native	White
Men	%	%	%	%	%
Women	%	%	%	%	%

Is your firm currently certified as a minority, women-owned, disadvantaged or disabled veterans business enterprise by a public agency? (If yes, complete the following and attach a copy of your notice of certification.)

	M	W	D	DV
Agency _____	_____	_____	_____	Expires _____
Agency _____	_____	_____	_____	Expires _____
Agency _____	_____	_____	_____	Expires _____
Agency _____	_____	_____	_____	Expires _____

LEGEND: M = Minority; W = Women; D = Disadvantaged; DV = Disabled Veterans

{PRIVATE } LAC/CBE SANCTIONS

1. A person or business shall not:
 - a. Knowingly and with the intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining, retaining or attempting to obtain or retain, acceptance or certification as a minority or women business enterprise, or both, for the purposes of this article.
 - b. Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a County official or employee for the purpose of influencing the acceptance or certification or denial of acceptance or certification of any entity as a minority or women business enterprise, or both.
 - c. Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any county official or employee who is investigating the qualifications of a business entity which has requested acceptance or certification as a minority or women business enterprise, or both.
 - d. Knowingly and with intent to defraud, fraudulently obtain, attempt or obtain, or aid another person or business in fraudulently obtaining or attempting to obtain, public moneys to which the person or business is not entitled under this article.
2. Any person or business who violates paragraph (1) shall be suspended from bidding on, or participating as contractor, subcontractor, or supplier in any County contract or project for a period of three years.
3. No County agency with the powers to award contracts shall enter into any contract with any person or business suspended for violating this section during the period of the person's or business' suspension. No awarding department shall award a contract to any contractor utilizing the services of any person or business as a subcontractor suspended for violating this section during the period of the person's or business suspension.

I acknowledge, that the undersigned, on behalf of himself or herself individually and on behalf of his or her business or organization, if any, is fully aware of the above policy of the County of Los Angeles and I declare under penalty of perjury that the foregoing Firm/Organization Information is true and correct.

Name of Firm _____
Signature _____
Title _____ Date _____

Exhibit G

EMPLOYEE ACKNOWLEDGMENT AND CONFIDENTIALITY AGREEMENT

CONTRACTOR EMPLOYEE ACKNOWLEDGMENT

AND CONFIDENTIALITY AGREEMENT

GENERAL INFORMATION

Your employer, _____, has entered into a contract with the County of Los Angeles to provide various services to the County. Therefore, your signature is required on this employee acknowledgment and confidentiality agreement.

EMPLOYEE ACKNOWLEDGMENT

I understand that _____, is my sole employer for purposes of this employment.

I rely exclusively upon _____, for payment of salary and any and all other benefits payable to me or on my behalf during the period of this employment.

I understand and agree that I am not an employee of Los Angeles County for any purposes and that I do not have and will not acquire any rights or benefits of any kind from the County of Los Angeles during the period of this employment.

I understand and agree that I do not have and will not acquire any rights or benefits pursuant to any agreement between my employer, _____ and the County of Los Angeles.

CONFIDENTIALITY AGREEMENT

As an employee of _____, you may be involved with work pertaining to County services and if so, you may have access to confidential data pertaining to persons and/or other entities who receive services from the County of Los Angeles. The County of Los Angeles has a legal obligation to protect all confidential data, especially data concerning welfare recipient records. If you are to be involved in County work, the County must ensure that you, too, will protect the confidentiality of all data. Consequently, you must sign this confidentiality agreement as a condition of your work to be provided to the County. Please read the agreement and take due time to consider it prior to signing.

I hereby agree that I will not divulge to any unauthorized person data obtained while performing work pursuant to the contract between _____ and the County of Los Angeles.

I agree to forward all requests for the release of information received by me to my immediate supervisor.

I agree to report any and all violations of the above by any other person and/or by myself to my immediate supervisor and I agree to ensure that said supervisor reports such violation to the County of Los Angeles Department of Children and Family Services.

I acknowledge that violation of this agreement and acknowledgment may subject me to civil and/or criminal action and that the County of Los Angeles will seek all possible legal redress.

Employee's Signature: _____ Date: _____

Employee's Printed Position/Title: _____

Exhibit H
Exhibit H

AUDITOR - CONTROLLER CONTRACT ACCOUNTING AND OPERATING HANDBOOK

The following handbook is designed for inclusion in most contracts for services entered into by County departments. The purpose of the handbook is to establish accounting, internal control, financial reporting, and contract administration standards for organizations (contractors) who contract with the County.

**AUDITOR-CONTROLLER
CONTRACT ACCOUNTING AND OPERATING HANDBOOK**

The following handbook is designed for inclusion in most contracts for services entered into by County departments. The purpose of the handbook is to establish accounting, internal control, financial reporting, and contract administration standards for organizations (contractors) who contract with the County.

Revised: 7/11/00

**AUDITOR-CONTROLLER
CONTRACT ACCOUNTING AND OPERATING HANDBOOK**

The purpose of this Handbook is to establish required accounting, financial reporting, and internal control standards for entities (contractor) which contract with the Los Angeles County.

The accounting, financial reporting and internal control standards described in this Handbook are fundamental. These standards are not intended to be all inclusive or replace acceptable existing procedures or preclude the use of more sophisticated methods. Instead, this Handbook represents the minimum required procedures and controls that must be incorporated into a CONTRACTOR's accounting and financial reporting systems. The internal control standards described are those that apply to organizations with adequate staffing. Organizations with a smaller staff must attempt to comply with the intent of the standards and implement internal control systems appropriate to the size of their staff/organization. The CONTRACTOR's subcontractors must also follow these standards unless otherwise stated in the Agreement.

A. ACCOUNTING AND FINANCIAL REPORTING

1.0 Basis of Accounting

Contractors may elect to use either the cash basis or accrual basis method of accounting for recording financial transactions. Monthly invoices must be prepared on the same basis that is used for recording financial transactions.

- 1.1 The County recommends the use of the accrual basis for recording financial transactions.

Accrual Basis

Under the accrual basis, revenues are recorded in the accounting period in which they are earned (rather than when cash is

received). Expenditures are recorded in the accounting period in which they are incurred (rather than when cash is disbursed).

Accruals

Accruals shall be recorded observing the following:

- ◆ Only accruals where cash will be disbursed within six months of the accrual date should be recorded.
- ◆ Recorded accruals must be reversed in the subsequent accounting period.

1.2 If an agent elects to use the cash basis for recording financial transactions during the year:

- ◆ Necessary adjustments must be made to record the accruals at the beginning and the end of the contract.
- ◆ All computations, supporting records, and explanatory notes used in converting from cash basis to the accrual basis must be retained.

1.3 Prepaid Expenses

Prepaid expenses (e.g., insurance, service agreements, lease agreements, etc.) should only be expensed during a given Agreement year to the extent goods and services are received during that Agreement year.

ACCOUNTING SYSTEM

2.0 Each agent shall maintain a double entry accounting system (utilizing debits and credits) with a General Journal, a Cash Receipts Journal, a General Ledger, and a Cash Disbursements Journal. The County recommends that a Payroll Register also be maintained. Postings to the General Ledger and Journals should be made on a monthly basis.

2.1 General Journal

A General Journal shall be maintained for recording adjusting entries, reversing entries, closing entries, and other financial transactions not normally recorded in the Cash Receipts Journal or Cash Disbursements Journal. Entries in the General Journal must be adequately documented, and entered in chronological order with sufficient explanatory notations.

Example:	DR	CR
Rent Expense		100
Rent Payable		100

To record accrued rent to March 31, 20XX

2.2 Cash Receipts Journal

A Cash Receipts Journal shall be maintained for recording all cash receipts (e.g., County warrants, contributions, interest income, etc.). The Cash Receipts Journal shall contain (minimum requirements) the following column headings:

- date
- receipt number
- cash debit columns
- income credit columns for the following accounts:
 - County payments (one per funding source)
 - Contributions
 - Other Income (Grants, sales of supplies/services, rental income, miscellaneous revenue, fees, etc.)
- Description (Entries in the description column must specify the source of cash receipts.)

2.3 Cash Disbursements Journal

A Cash Disbursements Journal shall be maintained for recording all cash disbursements (e.g., rent, utilities, maintenance, etc.)

The Cash Disbursements Journal shall contain (minimum requirements) the following column headings:

- □date
- □check number
- □cash (credit) column
- □expense account name
- □description

Note (1) Separate expense columns are recommended for salary expense and other recurring expense classifications for each program.

Note (2) Entries in the description column must specify the nature of the expense and the corresponding expense classification if not included in the column heading.

Note (3) Checks should not be written to employees (other than payroll, mileage, travel, and petty cash custodian checks.)

A Check Register may be substituted for the Cash Disbursements Journal, but this is not recommended. If used, the Check Register must contain the same expense classifications and description information required when a Cash Disbursements Journal is used.

Disbursements without supporting documentation will be disallowed on audit. Cancelled checks and credit card statements (VISA, AMEX, department store, etc.) will not constitute acceptable support. (See Section A.3.2 and B.2.4) for additional guidance.

2.4 General Ledger

A General Ledger shall be maintained with accounts for all assets, liabilities, fund balances, expenditures, and revenues. Separate accounts must be maintained for each County program's expenses and revenues.

2.5 Chart of Accounts

A Chart of Accounts shall be maintained:

- ☐ The County recommends that agents use the expense account titles on the monthly invoice submitted to the County.
- ☐ If the contractor uses account titles which differ from the account titles on the monthly invoice, each account title must clearly identify the nature of the transaction(s) posted to the account.
- ☐ Contractor must consistently post transactions that are of a similar nature to the same account. For example, all expenses for travel shall be posted to the account titled "travel" or "travel expense" and not intermixed with other expense accounts.

2.6 Payroll Register

The County recommends that a Payroll Register be maintained for recording all payroll transactions. The Register should contain the following:

- ☐ Name
- ☐ Position
- ☐ Social Security Number
- ☐ Salary (hourly wage)
- ☐ Payment Record including:
 - ☐ accrual period
 - ☐ gross pay
 - ☐ itemized payroll deductions
 - ☐ net pay amount
 - ☐ check number

If a Payroll Register is not used, the information in (2.6) must be recorded in the cash disbursements journal.

CONTRACTOR will ensure compliance with all applicable federal and State requirements for withholding payroll taxes (FIT, FICA, FUTA, SIT, SIU, etc.), reporting, filing (941, DE-7, W-2, W-4 and 1099s), and all applicable tax deposits.

Contractor will ensure compliance with Internal Revenue Service guidelines in properly classifying employees and independent contractors.

2.7 Contractor Invoices

Each agent shall present an invoice to the County each calendar month to report the financial activity of the month. In addition, if advanced funding is involved, an invoice shall be presented at the beginning of the contract period. Invoices shall be prepared in the manner prescribed by the County's contracting department.

3.0 Records

Adequate care shall be exercised to safeguard the accounting records and supporting documentation. Any destruction or theft of the CONTRACTOR's accounting records or supporting documentation shall be immediately reported to the County.

3.1 Retention

All accounting records (e.g., journals, ledgers, etc.), financial records and supporting documentation (e.g., invoices, receipts, checks, etc.) must be retained for a minimum of five years after the termination of the CONTRACTOR's agreement.

3.2 Supporting Documentation

All revenues and expenditures shall be supported by original vouchers, invoices, receipts, or other documentation and shall be maintained in the manner described herein.

Invoices, receipts and canceled checks will be required to support an outlay of funds. Unsupported disbursements will be disallowed on audit. CONTRACTOR will be required to repay COUNTY for all disallowed costs. **Photocopied invoices or receipts, any internally generated documents (i.e., vouchers, request for check forms, requisitions, canceled checks, etc.), and account statements do not constitute supporting documentation for purchases.**

Supporting documentation is required for various types of expenditures as follows:

Payroll – time and attendance records signed by the employee and approved in writing by the supervisor, time distribution records by program accounting for total work time on a daily basis for all employees, records showing actual expenditures for Social Security and unemployment insurance, State and federal quarterly tax returns, federal W-2 forms, and federal W-4 forms.

Consultant Services – contracts, time and attendance records, billing rates, travel vouchers detailing purpose, time and location of travel, purchase orders and invoices for supplies and invoices or other supporting documentation detailing the nature of services provided.

Travel – travel policies of the CONTRACTOR (written); travel expense vouchers showing location, date and time of travel, purpose of trip, and rates claimed; vehicle mileage logs showing dates, destination and headquarters, purpose of trip, and mileage. Travel related to conferences should include conference literature detailing purpose of the conference. Reimbursement rates for mileage shall not exceed applicable federal guidelines.

Reimbursement for actual receipts or per diem rates for meal expenses shall not exceed the maximum County's reimbursement rate for employees.

Receipts shall be required for lodging for approved out-of-town travel dates. Maximum reimbursable lodging amount is the maximum County's reimbursement rate for employees for a single occupancy hotel accommodation.

Operating Expenses (e.g., utilities, office supplies, equipment rentals, etc.) – bona fide contracts or lease agreements, if any,

and invoices and receipts detailing the cost and items purchased will constitute the primary supporting documentation. For internal control purposes, the CONTRACTOR may maintain vouchers, purchase orders, requisitions, stock received reports, bills of lading, etc.

Outside Meals - receipts and/or invoices for all meals, a record of the nature and purpose of each meal, and identification of the participants.

3.3 Payments to Affiliated Organizations or Persons

CONTRACTOR shall not make payments to affiliated organizations or persons for program expenses (e.g., salaries, services, rent, etc.) that exceed the lower of actual cost or the reasonable cost for such expenses. A reasonable cost shall be the price that would be paid by one party to another when the parties are dealing at arm's length (fair market price).

Organizations or persons (related parties) related to the CONTRACTOR or its members by blood, marriage, or through legal organization (corporation, partnership, association, etc.) will be considered affiliated for purposes of this Agreement. County shall be solely responsible for the determination of affiliation unless otherwise allowed and approved by the State or federal agencies.

Payments to affiliated organizations or persons will be disallowed on audit to the extent the payments exceed the lower of actual costs or the reasonable costs for such items.

3.4 Filing

All relevant supporting documentation for reported program expenditures and revenues shall be filed in a systematic and consistent manner. It is recommended that supporting documents be filed as follows:

- checks – numerically
- invoices – vendor name and date
- vouchers – numerically
- receipts – chronologically
- timecards – pay period and alphabetically

3.5 Referencing

Accounting transactions posted to the CONTRACTOR's books shall be appropriately cross-referenced to supporting documentation. It is recommended that expenditure transactions on the CONTRACTOR's books be cross-referenced to the supporting documentation as follows:

- □invoices – vender name and date
- □checks – number
- □vouchers –number
- □revenue – receipt number

Supporting documentation for non-payroll expenditures (i.e., operating expenditures) should be cross-referenced to the corresponding check issued for payment. If multiple invoices are paid with one check, all related invoices should be bound together and cross-referenced to the check issued for payment.

4.0 Donations and Other Sources of Revenue

Restricted donations and other sources of revenue earmarked specifically for the Contract must be utilized on allowable contract expenditures.

5.0 Audits

The agent will make available for inspection and audit to County representatives, upon request, during working hours, during the duration of the contract and for a period of five years thereafter, all of its books and records relating to the operation by it of each project or business activity which is funded in whole or part with governmental monies, whether or not such monies are received through the County. All such books and records shall be maintained at a location within Los Angeles County.

6.0 Single Audit Requirements

OMB Circular 133, "Audits of State, Local Governments and Non Profit Organizations" requires that certain organizations receiving federal awards, including pass-through awards, have annual audits. Details are contained in the respective Circular.

A copy of any Single Audit reports must be filed with the County within the timeframes prescribed by the applicable Circular.

7.0 Subcontracts

No CONTRACTOR shall subcontract services without the prior written consent of the County.

CONTRACTOR shall provide County with copies of all executed subcontracts and shall be responsible for the performance of their subcontractors.

B. INTERNAL CONTROLS

Internal controls safeguard the CONTRACTOR's assets from misappropriations, misstatements or misuse. Each CONTRACTOR shall prepare necessary written procedures establishing internal controls for its personnel. The CONTRACTOR shall instruct all of its personnel in these procedures and continuously monitor operations to ensure compliance with them.

1.0 Cash Receipts

1.1 Separate Fund or Cost Center

All contract revenues shall be maintained in a bank account. If revenues from other sources are maintained in the same bank account, revenues for each source must be clearly identifiable on the accounting records through the use of cost centers or separate accounts.

1.2 Deposits

All checks shall be restrictively endorsed upon receipt.

Cash received shall be recorded on pre-numbered receipts. Checks shall be recorded on a check remittance log at the time of receipt.

Cash receipts (i.e., cash and checks) totaling \$500 or more shall be deposited within one day of receipt. Collections of less than \$500 may be held and secured and deposited weekly or when the total reaches \$500, whichever occurs first.

Duplicate deposit slips shall be retained and filed chronologically, and shall contain sufficient reference information for comparison to the Cash Receipts Journal (and individual receipts, if applicable).

1.3 Separation of Duties

An employee who does not handle cash shall record all cash receipts.

1.4 Bank Reconciliations

Bank statements should be received and reconciled by someone with no cash handling, check writing, or bookkeeping functions.

Monthly bank reconciliations should be prepared within 30 days of the bank statement date and reviewed by management for appropriateness and accuracy. The bank reconciliations should be signed by both the preparer and the reviewer. Reconciling items should be resolved timely.

2.0 Disbursements

2.1 General

All disbursements for expenditures, other than petty cash, shall be made by check.

Blank check stock shall be secured and accounted for to preclude unauthorized use.

Checks shall not be payable to "cash" or signed in advance. Checks written to employees for reimbursement of out-of-pocket costs must be supported by receipts and invoices.

A second signature shall be required on all checks, unless otherwise specified in contract.

If the bookkeeper signs checks, a second signature shall be required on the checks, regardless of limits specified in contract.

Voided checks shall be marked void with the signature block cut out. The voided checks must be filed with the cancelled checks.

Unclaimed or undelivered checks shall be cancelled periodically.

All supporting documentation shall be referenced to check numbers and marked "paid" or otherwise canceled to prevent reuse or duplicate payments.

Disbursements without adequate supporting documentation will be disallowed on audit.

2.2 Approvals and Separation of Duties

Employees responsible for approving cash disbursements and/or signing of checks shall examine all supporting documentation at the time the checks are approved and signed.

All disbursements, excluding petty cash purchases, shall be approved by persons independent of check preparation and bookkeeping activities.

2.3 Petty Cash

A petty cash fund up to \$500 may be maintained for payment of small incidental expenses incurred by the CONTRACTOR (e.g., postage due, small purchases of office supply items, etc.). The CONTRACTOR must obtain written approval from the County to establish a petty cash fund greater than \$500.

Petty cash disbursements must be supported by invoices, store receipts or other external authenticating documents indicating the item purchased and the employee making the purchase. In the event that outside (external) supporting documentation is not obtainable for minor disbursements (under \$10), such as parking meters, etc., then documentation shall be considered as proper supporting documentation on a basis of reasonableness. Petty cash disbursements should not be used as a substitute for normal purchasing and disbursement practices i.e., payment by check).

The petty cash fund shall be maintained on an imprest basis. A check should be drawn to set up the fund and to make periodic reimbursements. Receipts, vouchers, etc., supporting each fund replenishment must be bound together, filed chronologically and cross referenced to the reimbursement check.

2.4 Credit Cards

The use of credit cards, both CONTRACTOR issued credit cards and an employee's personal credit cards used on behalf of the CONTRACTOR, should be limited to purchases where normal purchasing and disbursement practices are not suitable.

Credit cards issued in the CONTRACTOR's name must be adequately protected and usage monitored to ensure that only authorized and necessary items are purchased.

Credit card purchases should be pre-approved by CONTRACTOR management to ensure that they are reasonable and necessary.

All credit card disbursements must be supported by original invoices, store receipts or other external authenticating documents indicating the item purchased and the employee making the purchase. Credit card statements are not sufficient support for credit card purchases.

3.0 Timekeeping

3.1 Timecards

Timecards or time reports must be prepared for each pay period. Timecards or time reports must indicate total hours worked each day by program and total hours charged to each of the CONTRACTOR's programs. Time estimates do not qualify as support for payroll expenditures and will be disallowed on audit.

All timecards and time reports must be signed in ink by the employee and the employee's supervisor to certify the accuracy of the reported time.

3.2 Personnel and Payroll Records

Adequate security must be maintained over personnel and payroll records with access restricted to authorized individuals.

Personnel and payroll records should include (but not be limited to) the following:

- Employee's authorized salary rate
- Employee information sheet
- Resume and/or application
- Proof of qualifications for the position, if required (e.g., notarized copy or original diploma, license, etc.)
- Performance evaluations
- Criminal record clearance
- Citizenship Status
- Benefit balances (e.g., sick time, vacation, etc.)

Benefit Balances

Employee benefit balances (e.g., sick time, vacation, personal time, etc.) should be maintained on at least a monthly basis. Benefit balances should be increased when benefit hours are earned and decreased as hours are used.

Limitations on Positions and Salaries

The CONTRACTOR shall pay no salaries higher than those authorized in the contract, or the attachments thereto, except as proscribed by state or federal law.

If an employee serves in the same or dual capacities under more than one Agreement or program, the employee may not charge more than 100% of their time to the contracts or programs taken as a whole.

Salaried employees who work less than 40 hours per week shall be paid a salary that corresponds with the employee's work schedule.

The salary expense of salaried employees working on more than one Agreement or program shall be allocated to each program based on the ratio of the number of hours worked on each program during the pay period to the total number hours worked during the pay period.

The CONTRACTOR will make no retroactive salary adjustment for any employee without written approval from the County.

Separation of Duties

Payroll checks should be distributed by persons not involved in timekeeping, preparing of payroll, or reconciling bank accounts.

All employee hires and terminations, or pay rate changes, shall be approved by authorized persons independent of payroll functions.

All employee hires and terminations, or pay rate changes shall be approved in writing by authorized persons independent of payroll functions.

4.0 Fixed Assets

A fixed asset is defined as an article of nonexpendable tangible personal property having a useful life of more than two years. The County recommends all fixed assets with an acquisition cost of \$1,000 or more per unit be capitalized.

Acquisition cost means the net invoice unit price of an item, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it was acquired.

4.1 Acquisition

Fixed asset purchases shall be approved by the Agency's Board of Directors or their authorized representative.

4.2 Identification and Inventory

All fixed assets purchased with Contract funds are to be used solely for the benefit of the Contract and should be appropriately tagged.

Each CONTRACTOR shall maintain a current listing of fixed assets, including the item description, serial number, date of purchase, acquisition cost and sources of funding.

An inventory of all fixed assets should be conducted at least once each year to ensure that all fixed assets are accounted for and maintained in proper working order.

4.3 Security

Physical security should be adequately maintained over fixed assets to prevent misuse and theft of County property.

4.4 Property Management

The CONTRACTOR shall assume responsibility and accountability for the maintenance of all non-expandable property purchased, leased, or rented with Contract funds.

The CONTRACTOR shall report promptly, in writing, to the County all cases of theft, loss, damage, or destruction of fixed assets. The report shall contain at a minimum, item identification, recorded value, facts relating to loss, and a copy of the law enforcement report.

CONTRACTOR shall dispose of or return to the County all fixed assets, in accordance with their Contract.

5.0 Bonding – All officers, employees, and agents who handle cash or have access to the agent's funds shall be bonded.

C. COST PRINCIPLES

1.0 Policy

It is the intent of the COUNTY to provide funds for the purpose of CONTRACTOR providing services required by the Agreement. CONTRACTOR shall use these funds on actual expenses in an economical and efficient manner and ensure they are reasonable, proper and necessary costs of providing services and are allowable in accordance with the applicable OMB Circular.

1.1. Limitations on Expenditures of Program Funds

CONTRACTOR shall comply with the Agreement and the applicable OMB Circular. The Circular defines direct and indirect costs, discusses allowable cost allocation procedures and the development of Indirect Cost Rates, and specifically

addresses the allowability of a variety of different costs.

If a CONTRACTOR is unsure of the allowability of any particular type of cost or individual cost, the CONTRACTOR should request advance written approval from the County prior to incurring the cost.

1.2 Expenses Incurred Outside the Agreement Period

Expenses charged against program funds may not be incurred prior to the effective date of the Agreement or subsequent to the Agreement termination date.

1.3 Budget Limitation

Expenses may not exceed the maximum limits shown on the contract budget.

1.4 Unspent Funds

The County will determine the disposition of unspent program funds upon termination of the contract.

1.5 Necessary, Proper and Reasonable

Only those expenditures that are necessary, proper and reasonable to carry out the purposes and activities of the Program are allowable.

2.0 Allocation of Cost Pools

For CONTRACTORS that provide services in addition to the services required under contract, the CONTRACTOR shall allocate expenditures that benefit programs or funding sources on an equitable basis.

In accordance with the applicable OMB Circular, agencies shall define their allocable costs as either direct or indirect costs (as defined below) and allocate each cost using the basis most appropriate and feasible.

The CONTRACTOR shall maintain documentation related to the allocation of expenses (e.g., timecards, time summaries, square footage measurements, number of employees, etc.).

Under no circumstances shall allocated costs be charged to an extent greater than 100% of actual costs or the same cost be charged both directly and indirectly.

2.1 Direct Costs

Direct costs are those costs that can be identified specifically with a particular final cost objective (i.e., a particular program, service, or other direct activity of an organization). Examples of direct costs include salaries and benefits of employees working on the program, supplies and other items purchased specifically for the program, costs related to space used by employees working on the program, etc.

For all employees, other than general and administrative, the hours spent on each program (activity) should be recorded on employees' timecards and the payroll expense should be treated as direct charges and distributed on the basis of recorded hours spent on each program.

Joint costs (i.e., costs that benefit more than one program or activity) which can be distributed in reasonable proportion to the benefits received may also be direct costs.

Examples of bases for allocating joint costs as direct costs:

Number of direct hours spent on each program
Number of employees in each program
Square footage occupied by each program
Other equitable methods of allocation

2.2 Indirect Costs

Indirect costs are those costs that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Examples of indirect costs include salaries, employee benefits, supplies, and other costs related to general administration of the organization, depreciation and use allowances, and the salaries and expenses of executive officers, personnel administration, and accounting.

Examples of bases for allocating indirect costs:

Total direct salaries and wages
Total direct costs (excluding capital expenditures and other distorting items such as subcontractor payments)

2.3 Acceptable Indirect Cost Allocation Methods

OMB Circulars describe the following allowable methods for allocating indirect costs:

Simplified allocation method
Direct allocation method
Multiple allocation base method
Negotiated indirect cost rate

Simplified Allocation Method

This method can be used when an organization's major functions benefit from its indirect costs to approximately the same degree. Using this method, all allocable costs are considered indirect costs and an indirect cost rate is determined by dividing total allowable indirect costs by an equitable distribution base.

Example

Agency-wide indirect costs	\$250,000
Less: Capital expenditures	<u>10,000</u>
Allocable indirect costs	240,000
Total agency-wide indirect salaries	\$1,000,000
Indirect cost rate (\$240,000/\$1,000,000)	24%
Program direct salaries	\$100,000
Program indirect costs (24% x \$100,000)	<u>\$24,000</u>

Direct Allocation Method

This method can also be used when an organization's major functions benefit from its indirect costs to approximately the same degree. Using this method, all costs except general administration and general expenses are treated as direct costs. Joint costs for depreciation, rental, facilities maintenance, telephone, and other similar expenses are prorated individually to each direct activity on a basis appropriate for that type of cost.

The remaining costs, which consist exclusively of general administration and general expenses are then allocated using the simplified allocation method previously discussed.

Multiple Base Allocation Method

This method can be used when an organization's major functions benefit from its indirect costs in varying degrees. Using this method, indirect costs are grouped to permit allocation of each grouping on the basis of the benefits provided to the major functions. Each grouping is then allocated individually using the basis most appropriate for the grouping being allocated.

2.4 Cost Allocation Plan

If the CONTRACTOR has a negotiated indirect cost rate approved by a federal agency, it shall submit a copy of the approval letter when requested by County.

If the CONTRACTOR does not have a negotiated indirect cost rate, CONTRACTOR shall submit an annual Agency-wide Cost Allocation Plan when requested by County. The Cost Allocation Plan shall be prepared in accordance with County instructions and the applicable OMB Circular and include the following information:

1. CONTRACTOR general accounting policies:
 - Basis of accounting (cash or accrual)
 - Fiscal year
 - Method for allocating indirect costs (simplified, direct, multiple, negotiated rate)
 - indirect cost rate allocation base
2. Identify the CONTRACTOR's direct and indirect costs (by category) and describe the cost allocation methodology for each category.
3. Signature of CONTRACTOR management certifying the accuracy of the plan.

Negotiated Indirect Cost Rates

Agencies have the option of negotiating an indirect cost rate or rates for use on all their Federal programs. The CONTRACTOR must submit a cost allocation plan to the federal agency providing the most funds to the organization. The approved indirect cost rate is then applied to the total approved direct cost base.

If CONTRACTOR has a federally approved indirect cost rate, CONTRACTOR shall submit a copy of the approval letter to COUNTY upon request.

D. UNALLOWABLE COSTS

OMB Circulars address the allowability of a variety of different costs. For all costs, there are certain restrictions and limitations; however, the following costs are not allowable under any circumstances:

- Bad debts
- Contingency provisions
- Contributions and donations
- Fines and penalties
- Fundraising activities
- Interest expense (unless expressly allowed by Federal guidelines)
- Losses on other awards

E. OVERPAYMENTS

If upon audit, or at any time during the Agreement year, it is determined that invoices submitted to the County and used as a basis for payments to the CONTRACTOR were inaccurate, County shall determine the total overpayment and require the CONTRACTOR to repay County. The County may withhold payments from CONTRACTOR's future payments for any amounts not returned to the COUNTY or credited to the Contract unless otherwise prohibited by State or federal regulations.

F. MISCELLANEOUS REQUIREMENTS

1.0 Insurance

CONTRACTOR is responsible for securing and maintaining insurance coverage as required by the Agreement. CONTRACTOR must notify County when insurance is revoked, reduced to a level or coverage less than required, or otherwise made ineffective.

Insurance shall include an endorsement naming the COUNTY as an additional insured.

2.0 Activity

No funds, materials, property, or services contributed to the COUNTY or the CONTRACTOR under this Agreement shall be used in the performance of any political activity, the election of any candidate, or the defeat of any candidate for public office.

Exhibit I

OMB CIRCULAR NO. A-87

**COST PRINCIPLES FOR STATE,
LOCAL AND INDIAN TRIBAL GOVERNMENTS**

August 29, 1997

MEMORANDUM FOR THE RECORD

FROM: Norwood J. Jackson
Deputy Controller
Office of Federal Financial Management

SUBJECT: Recompilation of OMB Circular A-87

I certify that the attached document constitutes a recompilation of Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments." The recompilation consists of the last complete revision of the Circular published at 60 FR 26484 (dated May 4, 1995, published May 17, 1995), as further amended at 62 FR 45934 (August 29, 1997).

OMB CIRCULAR A-87 (REVISED 5/4/95, As Further Amended 8/29/97)

CIRCULAR NO. A-87
Revised

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Cost Principles for State, Local, and Indian Tribal Governments

1. **Purpose.** This Circular establishes principles and standards for determining costs for Federal awards carried out through grants, cost reimbursement contracts, and other agreements with State and local governments and federally-recognized Indian tribal governments (governmental units).

2. **Authority.** This Circular is issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Procedures Act of 1950, as amended; the Chief Financial Officers Act of 1990; Reorganization Plan No. 2 of 1970; and Executive Order No. 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President").

3. **Background.** An interagency task force was established in 1987 to review existing cost principles for Federal awards to State, local, and Indian tribal governments. The task force studied Inspector General reports and recommendations, solicited suggestions for changes to the Circular from governmental units, and compared for consistency the provisions of other OMB cost principles circulars covering non-profit organizations and universities. A proposed revised Circular reflecting the results of those efforts was issued on October 12, 1988, and August 19, 1993. Extensive

comments on the proposed revisions, discussions with interest groups, and related developments were considered in developing this revision.

4. **Rescissions.** This Circular rescinds and supersedes Circular A-87, issued January 15, 1981.

5. **Policy.** This Circular establishes principles and standards to provide a uniform approach for determining costs and to promote effective program delivery, efficiency, and better relationships between governmental units and the Federal Government. The principles are for determining allowable costs only. They are not intended to identify the circumstances or to dictate the extent of Federal and governmental unit participation in the financing of a particular Federal award. Provision for profit or other increment above cost is outside the scope of this Circular.

6. **Definitions.** Definitions of key terms used in this Circular are contained in Attachment A, Section B.

7. **Required Action.** Agencies responsible for administering programs that involve cost reimbursement contracts, grants, and other agreements with governmental units shall issue codified regulations to implement the provisions of this Circular and its Attachments by September 1, 1995.

8. **OMB Responsibilities.** The Office of Management and Budget (OMB) will review agency regulations and implementation of this Circular, and will provide policy interpretations and assistance to insure effective and efficient implementation. Any exceptions will be subject to approval by OMB. Exceptions will only be made in particular cases where adequate justification is presented.

9. **Information Contact.** Further information concerning this Circular may be obtained by contacting the Office of Federal Financial Management, Financial Standards and Reporting Branch, Office of Management and Budget, Washington, DC 20503, telephone 202-395-3993.

10. **Policy Review Date.** OMB Circular A-87 will have a policy review three years from the date of issuance.

11. **Effective Date.** This Circular is effective as follows:

- For costs charged indirectly or otherwise covered by the cost allocation plans described in Attachments C, D and E, this revision shall be applied to cost allocation plans and indirect cost proposals submitted or prepared for a governmental unit's fiscal year that begins on or after September 1, 1995.
- For other costs, this revision shall be applied to all awards or amendments, including continuation or renewal awards, made on or after September 1, 1995.

Attachments

OMB CIRCULAR NO. A-87

COST PRINCIPLES FOR
STATE, LOCAL AND INDIAN TRIBAL GOVERNMENTS

TABLE OF CONTENTS

Attachment A	-	General Principles for Determining Allowable Costs
Attachment B	-	Selected Items of Cost
Attachment C	-	State/Local-Wide Central Service Cost Allocation Plans
Attachment D	-	Public Assistance Cost Allocation Plans
Attachment E	-	State and Local Indirect Cost Rate Proposals

ATTACHMENT A
Circular No. A-87

GENERAL PRINCIPLES FOR DETERMINING
ALLOWABLE COSTS

TABLE	OF	CONTENTS
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A. Purpose and Scope

1. Objectives
2. Policy guides
- 3.

Application

B. Definitions

1. Approval or authorization of the awarding or cognizant Federal agency
2. Award
3. Awarding agency
4. Central service cost allocation plan
5. Claim
6. Cognizant agency
7. Common rule
8. Contract
9. Cost
10. Cost allocation plan
11. Cost objective
12. Federally-recognized Indian tribal government
13. Governmental unit
14. Grantee department or agency
15. Indirect cost rate proposal

16. Local government
17. Public assistance cost allocation plan
18. State

C. Basic Guidelines

1. Factors affecting allowability of costs
2. Reasonable costs
3. Allocable costs
4. Applicable credits

D. Composition of Cost

1. Total cost
2. Classification of costs

E. Direct Costs

1. General
2. Application
3. Minor items

F. Indirect Costs

1. General
2. Cost allocation plans and indirect cost proposals
3. Limitation on indirect or administrative costs

G. Interagency Services

H. Required Certifications

A. Purpose and Scope

1. Objectives. This Attachment establishes principles for determining the allowable costs incurred by State, local, and federally-recognized Indian tribal governments (governmental units) under grants, cost reimbursement contracts, and other agreements with the Federal Government (collectively referred to in this Circular as "Federal awards"). The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal or governmental unit participation in the financing of a particular program or project. The principles are designed to provide that Federal awards bear their fair share of cost recognized under these principles except where restricted or prohibited by law. Provision for profit or other increment above cost is outside the scope of this Circular.

2. Policy guides.

a. The application of these principles is based on the fundamental premises that:

(1) Governmental units are responsible for the efficient and effective administration of Federal awards through the application of sound management practices.

(2) Governmental units assume responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

(3) Each governmental unit, in recognition of its own unique combination of staff, facilities, and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration of Federal awards.

b. Federal agencies should work with States or localities which wish to test alternative mechanisms for paying costs for administering Federal programs. The Office of Management and Budget (OMB) encourages Federal agencies to test fee-for-service alternatives as a replacement for current cost-reimbursement payment methods in response to the National Performance Review's (NPR) recommendation. The NPR recommended the fee-for-service approach to reduce the burden associated with maintaining systems for charging administrative costs to Federal programs and preparing and approving cost allocation plans. This approach should also increase incentives for administrative efficiencies and improve outcomes.

3. Application.

a. These principles will be applied by all Federal agencies in determining costs incurred by governmental units under Federal awards (including subawards) except those with (1) publicly-financed educational institutions subject to OMB Circular A-21, "Cost Principles for Educational Institutions," and (2) programs administered by publicly-owned hospitals and other providers of medical care that are subject to requirements promulgated by the sponsoring Federal agencies. However, this Circular does apply to all central service and department/agency costs that are allocated or billed to those educational institutions, hospitals, and other providers of medical care or services by other State and local government departments and agencies.

b. All subawards are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a governmental unit (other than a college, university or hospital), this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial organizations shall apply; if a subaward is to a college or university, Circular A-21 shall apply; if a subaward is to a hospital, the cost principles used by the Federal awarding agency for awards to hospitals shall apply, subject to the provisions of subsection A.3.a. of this Attachment; if a subaward is to some other non-profit organization, Circular A-122, "Cost Principles for Non-Profit Organizations," shall apply.

c. These principles shall be used as a guide in the pricing of fixed price arrangements where costs are used in determining the appropriate price.

d. Where a Federal contract awarded to a governmental unit incorporates a Cost Accounting Standards (CAS) clause, the requirements of that clause shall apply. In such cases, the governmental unit and the cognizant Federal agency shall establish an appropriate advance agreement on how the governmental unit will comply with applicable CAS requirements when estimating, accumulating and reporting costs

under CAS-covered contracts. The agreement shall indicate that OMB Circular A-87 requirements will be applied to other Federal awards. In all cases, only one set of records needs to be maintained by the governmental unit.

e. Conditional exemptions.

(1) OMB authorizes conditional exemption from OMB administrative requirements and cost principles circulars for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

(2) To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of OMB Circulars A-87 (Attachment A, subsection C.3), "Cost Principles for State, Local, and Indian Tribal Governments," A-21 (Section C, subpart 4), "Cost Principles for Educational Institutions," and A-122 (Attachment A, subsection A.4), "Cost Principles for Non-Profit Organizations," and from all of the administrative requirements provisions of OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and the agencies' grants management common rule.

(3) When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of OMB Circular A-87, and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

B. **Definitions**

1. "Approval or authorization of the awarding or cognizant Federal agency" means documentation evidencing consent prior to incurring a specific cost. If such costs are specifically identified in a Federal award document, approval of the document constitutes approval of the costs. If the costs are covered by a State/local-wide cost allocation plan or an indirect cost proposal, approval of the plan constitutes the approval.

2. "Award" means grants, cost reimbursement contracts and other agreements between a State, local and Indian tribal government and the Federal Government.
3. "Awarding agency" means (a) with respect to a grant, cooperative agreement, or cost reimbursement contract, the Federal agency, and (b) with respect to a subaward, the party that awarded the subaward.
4. "Central service cost allocation plan" means the documentation identifying, accumulating, and allocating or developing billing rates based on the allowable costs of services provided by a governmental unit on a centralized basis to its departments and agencies. The costs of these services may be allocated or billed to users.
5. "Claim" means a written demand or written assertion by the governmental unit or grantor seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of award terms, or other relief arising under or relating to the award. A voucher, invoice or other routine request for payment that is not a dispute when submitted is not a claim. Appeals, such as those filed by a governmental unit in response to questioned audit costs, are not considered claims until a final management decision is made by the Federal awarding agency.
6. "Cognizant agency" means the Federal agency responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals developed under this Circular on behalf of all Federal agencies. OMB publishes a listing of cognizant agencies.
7. "Common Rule" means the "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Final Rule" originally issued at 53 FR 8034-8103 (March 11, 1988). Other common rules will be referred to by their specific titles.
8. "Contract" means a mutually binding legal relationship obligating the seller to furnish the supplies or services (including construction) and the buyer to pay for them. It includes all types of commitments that obligate the government to an expenditure of appropriated funds and that, except as otherwise authorized, are in writing. In addition to bilateral instruments, contracts include (but are not limited to): awards and notices of awards; job orders or task orders issued under basic ordering agreements; letter contracts; orders, such as purchase orders, under which the contract becomes effective by written acceptance or performance; and, bilateral contract modifications. Contracts do not include grants and cooperative agreements covered by 31 U.S.C. 6301 et seq.
9. "Cost" means an amount as determined on a cash, accrual, or other basis acceptable to the Federal awarding or cognizant agency. It does not include transfers to a general or similar fund.
10. "Cost allocation plan" means central service cost allocation plan, public assistance cost allocation plan, and indirect cost rate proposal. Each of these terms are further

defined in this section.

11. "Cost objective" means a function, organizational subdivision, contract, grant, or other activity for which cost data are needed and for which costs are incurred.

12. "Federally-recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any native village as defined in Section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided through the Bureau of Indian Affairs.

13. "Governmental unit" means the entire State, local, or federally-recognized Indian tribal government, including any component thereof. Components of governmental units may function independently of the governmental unit in accordance with the term of the award.

14. "Grantee department or agency" means the component of a State, local, or federally-recognized Indian tribal government which is responsible for the performance or administration of all or some part of a Federal award.

15. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or component thereof to substantiate its request for the establishment of an indirect cost rate as described in Attachment E of this Circular.

16. "Local government" means a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a non-profit corporation under State law), any other regional or interstate government entity, or any agency or instrumentality of a local government.

17. "Public assistance cost allocation plan" means a narrative description of the procedures that will be used in identifying, measuring and allocating all administrative costs to all of the programs administered or supervised by State public assistance agencies as described in Attachment D of this Circular.

18. "State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments.

C. Basic Guidelines

1. Factors affecting allowability of costs. To be allowable under Federal awards, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient performance and administration of Federal awards.

- b. Be allocable to Federal awards under the provisions of this Circular.
- c. Be authorized or not prohibited under State or local laws or regulations.
- d. Conform to any limitations or exclusions set forth in these principles, Federal laws, terms and conditions of the Federal award, or other governing regulations as to types or amounts of cost items.
- e. Be consistent with policies, regulations, and procedures that apply uniformly to both Federal awards and other activities of the governmental unit.
- f. Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.
- g. Except as otherwise provided for in this Circular, be determined in accordance with generally accepted accounting principles.
- h. Not be included as a cost or used to meet cost sharing or matching requirements of any other Federal award in either the current or a prior period, except as specifically provided by Federal law or regulation.
- i. Be the net of all applicable credits.
- j. Be adequately documented.

2. Reasonable costs. A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when governmental units or components are predominately federally- funded. In determining reasonableness of a given cost, consideration shall be given to:

- a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the governmental unit or the performance of the Federal award.
- b. The restraints or requirements imposed by such factors as: sound business practices; arms length bargaining; Federal, State and other laws and regulations; and, terms and conditions of the Federal award.
- c. Market prices for comparable goods or services.
- d. Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the governmental unit, its employees, the public at large, and the Federal Government.
- e. Significant deviations from the established practices of the governmental unit which may unjustifiably increase the Federal award's cost.

3. Allocable costs.

a. A cost is allocable to a particular cost objective if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received.

b. All activities which benefit from the governmental unit's indirect cost, including unallowable activities and services donated to the governmental unit by third parties, will receive an appropriate allocation of indirect costs.

c. Any cost allocable to a particular Federal award or cost objective under the principles provided for in this Circular may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by law or terms of the Federal awards, or for other reasons. However, this prohibition would not preclude governmental units from shifting costs that are allowable under two or more awards in accordance with existing program agreements.

d. Where an accumulation of indirect costs will ultimately result in charges to a Federal award, a cost allocation plan will be required as described in Attachments C, D, and E.

4. Applicable credits.

a. Applicable credits refer to those receipts or reduction of expenditure-type transactions that offset or reduce expense items allocable to Federal awards as direct or indirect costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the governmental unit relate to allowable costs, they shall be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the Federal Government to finance activities or service operations of the governmental unit should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) should be recognized in determining the rates or amounts to be charged to Federal awards. (See Attachment B, item 15, "Depreciation and use allowances," for areas of potential application in the matter of Federal financing of activities.)

D. Composition of Cost

1. Total cost. The total cost of Federal awards is comprised of the allowable direct cost of the program, plus its allocable portion of allowable indirect costs, less applicable credits.

2. Classification of costs. There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with

respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost be treated consistently in like circumstances either as a direct or an indirect cost. Guidelines for determining direct and indirect costs charged to Federal awards are provided in the sections that follow.

E. Direct Costs

1. General. Direct costs are those that can be identified specifically with a particular final cost objective.

2. Application. Typical direct costs chargeable to Federal awards are:

a. Compensation of employees for the time devoted and identified specifically to the performance of those awards.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of those awards.

c. Equipment and other approved capital expenditures.

d. Travel expenses incurred specifically to carry out the award.

3. Minor items. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all cost objectives.

F. Indirect Costs

1. General. Indirect costs are those: (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect costs within a governmental unit department or in other agencies providing services to a governmental unit department. Indirect cost pools should be distributed to benefitted cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

2. Cost allocation plans and indirect cost proposals. Requirements for development and submission of cost allocation plans and indirect cost rate proposals are contained in Attachments C, D, and E.

3. Limitation on indirect or administrative costs.

- a. In addition to restrictions contained in this Circular, there may be laws that further limit the amount of administrative or indirect cost allowed.
- b. Amounts not recoverable as indirect costs or administrative costs under one Federal award may not be shifted to another Federal award, unless specifically authorized by Federal legislation or regulation.

G. Interagency Services. The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro rate share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Attachment C.

H. Required Certifications. Each cost allocation plan or indirect cost rate proposal required by Attachments C and E must comply with the following:

1. No proposal to establish a cost allocation plan or an indirect cost rate, whether submitted to a Federal cognizant agency or maintained on file by the governmental unit, shall be acceptable unless such costs have been certified by the governmental unit using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Attachments C and E. The certificate must be signed on behalf of the governmental unit by an individual at a level no lower than chief financial officer of the governmental unit that submits the proposal or component covered by the proposal.
2. No cost allocation plan or indirect cost rate shall be approved by the Federal Government unless the plan or rate proposal has been certified. Where it is necessary to establish a cost allocation plan or an indirect cost rate and the governmental unit has not submitted a certified proposal for establishing such a plan or rate in accordance with the requirements, the Federal Government may either disallow all indirect costs or unilaterally establish such a plan or rate. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant Federal agency and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because of failure of the governmental unit to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

SELECTED ITEMS OF COST					
TABLE	OF				CONTENTS
1.					Accounting
2.	Advertising	and	public	relations	costs
3.	Advisory				councils

4.		Alcoholic		beverages
5.		Audit		services
6.	Automatic	electronic	data	processing
7.		Bad		debts
8.		Bonding		costs
9.				Budgeting
10.				Communications
11.	Compensation	for	personnel	services
a.				General
b.				Reasonableness
c.		Unallowable		costs
d.		Fringe		benefits
e.	Pension		plan	costs
f.	Post-retirement		health	benefits
g.		Severance		Pay
h.	Support	of	salaries	and wages
i.		Donated		services
12.				Contingencies
13.	Contributions		and	donations
14.	Defense and prosecution of criminal and civil proceedings,			and claims
15.	Depreciation	and	use	allowances
16.		Disbursing		service
17.	Employee morale,	health,	and	welfare costs
18.				Entertainment
19.	Equipment	and	other capital	expenditures
20.	Fines		and	penalties
21.	Fund raising and investment management			costs
22.	Gains and losses on disposition of depreciable property and other capital assets			
and	substantial relocation of Federal			programs.
23.	General	government		expenses
24.	Idle facilities	and	idle	capacity
25.	Insurance	and		indemnification
26.				Interest
27.				Lobbying
28.	Maintenance,	operations,	and	repairs
29.	Materials		and	supplies
30.	Memberships,	subscriptions,	and professional	activities
31.		Motor		pools
32.		Pre-award		costs
33.	Professional		service	costs
34.		Proposal		costs
35.	Publication	and	printing	costs
36.	Rearrangements		and	alterations
37.		Reconversion		costs
38.		Rental		costs
39.				Taxes
40.				Training
41.		Travel		costs

42. Underrecovery of costs under Federal agreements

Sections 1 through 42 provide principles to be applied in establishing the allowability or unallowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. A cost is allowable for Federal reimbursement only to the extent of benefits received by Federal awards and its conformance with the general policies and principles stated in Attachment A to this Circular. Failure to mention a particular item of cost in these sections is not intended to imply that it is either allowable or unallowable; rather, determination of allowability in each case should be based on the treatment or standards provided for similar or related items of cost.

1. **Accounting.** The cost of establishing and maintaining accounting and other information systems is allowable.

2. Advertising and public relations costs.

a. The term "advertising costs" means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The term "public relations" includes community relations and means those activities dedicated to maintaining the image of the governmental unit or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. Advertising costs are allowable only when incurred for the recruitment of personnel, the procurement of goods and services, the disposal of surplus materials, and any other specific purposes necessary to meet the requirements of the Federal award. Advertising costs associated with the disposal of surplus materials are not allowable where all disposal costs are reimbursed based on a standard rate as specified in the grants management common rule.

d. Public relations costs are allowable when:

(1) Specifically required by the Federal award and then only as a direct cost;

(2) Incurred to communicate with the public and press pertaining to specific activities or accomplishments that result from performance of the Federal award and then only as a direct cost; or

(3) Necessary to conduct general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of Federal contract/grant awards, financial matters, etc.

e. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subsections c. and d.;

(2) Except as otherwise permitted by these cost principles, costs of conventions, meetings, or other events related to other activities of the governmental unit including:

(a) Costs of displays, demonstrations, and exhibits;

(b) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(c) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the governmental unit.

3. **Advisory councils.** Costs incurred by advisory councils or committees are allowable as a direct cost where authorized by the Federal awarding agency or as an indirect cost where allocable to Federal awards.

4. **Alcoholic beverages.** Costs of alcoholic beverages are unallowable.

5. **Audit services.** The costs of audits are allowable provided that the audits were performed in accordance with the Single Audit Act, as implemented by Circular A-128, "Audits of State and Local Governments." [Note: In June 1997, OMB rescinded Circular A-128 and co-located all audit requirements in a re-titled Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."] Generally, the percentage of costs charged to Federal awards for a single audit shall not exceed the percentage derived by dividing Federal funds expended by total funds expended by the recipient or subrecipient (including program matching funds) during the fiscal year. The percentage may be exceeded only if appropriate documentation demonstrates higher actual costs.

Other audit costs are allowable if specifically approved by the awarding or cognizant agency as a direct cost to an award or included as an indirect cost in a cost allocation plan or rate.

6. **Automatic electronic data processing.** The cost of data processing services is allowable (but see section 19, Equipment and other capital expenditures).

7. **Bad debts.** Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable unless provided for in Federal program award regulations.

8. **Bonding costs.** Costs of bonding employees and officials are allowable to the extent that such bonding is in accordance with sound business practice.

9. **Budgeting.** Costs incurred for the development, preparation, presentation, and execution of budgets are allowable.

10. **Communications.** Costs of telephone, mail, messenger, and similar communication services are allowable.

11. **Compensation for personnel services.**

a. General. Compensation for personnel services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under Federal awards, including but not necessarily limited to wages, salaries, and fringe benefits. The costs of such compensation are allowable to the extent that they satisfy the specific requirements of this Circular, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established policy of the governmental unit consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a governmental unit's laws and rules and meets merit system or other requirements required by Federal law, where applicable; and

(3) Is determined and supported as provided in subsection h.

b. Reasonableness. Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the governmental unit. In cases where the kinds of employees required for Federal awards are not found in the other activities of the governmental unit, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

c. Unallowable costs. Costs which are unallowable under other sections of these principles shall not be allowable under this section solely on the basis that they constitute personnel compensation.

d. Fringe benefits.

(1) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable to the extent that the benefits are reasonable and

are required by law, governmental unit-employee agreement, or an established policy of the governmental unit.

(2) The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, holidays, court leave, military leave, and other similar benefits, are allowable if: (a) they are provided under established written leave policies; (b) the costs are equitably allocated to all related activities, including Federal awards; and, (c) the accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the governmental unit.

(3) When a governmental unit uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment provided they are allocated as a general administrative expense to all activities of the governmental unit or component.

(4) The accrual basis may be only used for those types of leave for which a liability as defined by Generally Accepted Accounting Principles (GAAP) exists when the leave is earned. When a governmental unit uses the accrual basis of accounting, in accordance with GAAP, allowable leave costs are the lesser of the amount accrued or funded.

(5) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in section 25, Insurance and indemnification); pension plan costs (see subsection e.); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, whether treated as indirect costs or as direct costs, shall be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities.

e. Pension plan costs. Pension plan costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the governmental unit's contribution to the pension fund. Adjustments may be made by cash refund or other

equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(3) Amounts funded by the governmental unit in excess of the actuarially determined amount for a fiscal year may be used as the governmental unit's contribution in future periods.

(4) When a governmental unit converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion shall be allowable if amortized over a period of years in accordance with GAAP.

(5) The Federal Government shall receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

f. Post-retirement health benefits. Post-retirement health benefits (PRHB) refers to costs of health insurance or health services not included in a pension plan covered by subsection e. for retirees and their spouses, dependents, and survivors. PRHB costs may be computed using a pay-as-you-go method or an acceptable actuarial cost method in accordance with established written policies of the governmental unit.

(1) For PRHB financed on a pay as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHB costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The cognizant agency may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the governmental unit's contributions to the PRHB fund. Adjustments may be made by cash refund, reduction in current year's PRHB costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHB fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the government's contribution in a future period.

(4) When a governmental unit converts to an acceptable actuarial cost method and funds PRHB costs in accordance with this method, the initial unfunded liability attributable to prior years shall be allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency.

(5) To be allowable in the current year, the PRHB costs must be paid either to:

(a) An insurer or other benefit provider as current year costs or premiums, or

(b) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government shall receive an equitable share of any amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the governmental unit in the form of a refund, withdrawal, or other credit.

g. Severance pay.

(1) Payments in addition to regular salaries and wages made to workers whose employment is being terminated are allowable to the extent that, in each case, they are required by (a) law, (b) employer-employee agreement, or (c) established written policy.

(2) Severance payments (but not accruals) associated with normal turnover are allowable. Such payments shall be allocated to all activities of the governmental unit as an indirect cost.

(3) Abnormal or mass severance pay will be considered on a case-by-case basis and is allowable only if approved by the cognizant Federal agency.

h. Support of salaries and wages. These standards regarding time distribution are in addition to the standards for payroll documentation.

(1) Charges to Federal awards for salaries and wages, whether treated as direct or indirect costs, will be based on payrolls documented in accordance with generally accepted practice of the governmental unit and approved by a responsible official(s) of the governmental unit.

(2) No further documentation is required for the salaries and wages of employees who work in a single indirect cost activity.

(3) Where employees are expected to work solely on a single Federal award or cost objective, charges for their salaries and wages will be supported by periodic certifications that the employees worked solely on that program for the period covered by the certification. These certifications will be prepared at least semi-annually and will be signed by the employee or supervisory official having first hand knowledge of the work performed by the employee.

(4) Where employees work on multiple activities or cost objectives, a distribution of their salaries or wages will be supported by personnel activity reports or equivalent documentation which meets the standards in subsection (5) unless a statistical sampling system (see subsection (6)) or other substitute system has been approved by the cognizant Federal agency. Such documentary support will be required where employees work on:

(a) More than one Federal award,

- (b) A Federal award and a non-Federal award,
- (c) An indirect cost activity and a direct cost activity,
- (d) Two or more indirect activities which are allocated using different allocation bases, or

(e) An unallowable activity and a direct or indirect cost activity.

(5) Personnel activity reports or equivalent documentation must meet the following standards:

(a) They must reflect an after-the-fact distribution of the actual activity of each employee,

(b) They must account for the total activity for which each employee is compensated,

(c) They must be prepared at least monthly and must coincide with one or more pay periods, and

(d) They must be signed by the employee.

(e) Budget estimates or other distribution percentages determined before the services are performed do not qualify as support for charges to Federal awards but may be used for interim accounting purposes, provided that:

(i) The governmental unit's system for establishing the estimates produces reasonable approximations of the activity actually performed;

(ii) At least quarterly, comparisons of actual costs to budgeted distributions based on the monthly activity reports are made. Costs charged to Federal awards to reflect adjustments made as a result of the activity actually performed may be recorded annually if the quarterly comparisons show the differences between budgeted and actual costs are less than ten percent; and

(iii) The budget estimates or other distribution percentages are revised at least quarterly, if necessary, to reflect changed circumstances.

(6) Substitute systems for allocating salaries and wages to Federal awards may be used in place of activity reports. These systems are subject to approval if required by the cognizant agency. Such systems may include, but are not limited to, random moment sampling, case counts, or other quantifiable measures of employee effort.

(a) Substitute systems which use sampling methods (primarily for Aid to Families with Dependent Children (AFDC), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(i) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as provided in subsection (c);

(ii) The entire time period involved must be covered by the sample; and

(iii) The results must be statistically valid and applied to the period being sampled.

(b) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(c) Less than full compliance with the statistical sampling standards noted in subsection (a) may be accepted by the cognizant agency if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the governmental unit will result in lower costs to Federal awards than a system which complies with the standards.

(7) Salaries and wages of employees used in meeting cost sharing or matching requirements of Federal awards must be supported in the same manner as those claimed as allowable costs under Federal awards.

i. Donated services.

(1) Donated or volunteer services may be furnished to a governmental unit by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of the Common Rule.

(2) The value of donated services utilized in the performance of a direct cost activity shall, when material in amount, be considered in the determination of the governmental unit's indirect costs or rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs.

(3) To the extent feasible, donated services will be supported by the same methods used by the governmental unit to support the allocability of regular personnel services.

12. Contingencies. Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, or intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see subsection 25.c.), pension plan reserves (see subsection 11.e.), and post-retirement health and other benefit reserves (see subsection 11.f.) computed using acceptable actuarial cost methods.

13. Contributions and donations. Contributions and donations, including cash, property, and services, by governmental units to others, regardless of the recipient, are unallowable.

14. Defense and prosecution of criminal and civil proceedings, and claims.

a. The following costs are unallowable for contracts covered by 10 U.S.C. 2324(k), "Allowable costs under defense contracts."

(1) Costs incurred in defense of any civil or criminal fraud proceeding or similar proceeding (including filing of false certification brought by the United States where the contractor is found liable or has pleaded nolo contendere to a charge of fraud or similar proceeding (including filing of a false certification)).

(2) Costs incurred by a contractor in connection with any criminal, civil or administrative proceedings commenced by the United States or a State to the extent provided in 10 U.S.C. 2324(k).

b. Legal expenses required in the administration of Federal programs are allowable. Legal expenses for prosecution of claims against the Federal Government are unallowable.

15. Depreciation and use allowances.

a. Depreciation and use allowances are means of allocating the cost of fixed assets to periods benefitting from asset use. Compensation for the use of fixed assets on hand may be made through depreciation or use allowances. A combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.) except as provided in subsection g. Except for enterprise funds and internal service funds that are included as part of a State/local cost allocation plan, classes of assets shall be determined on the same basis used for the government-wide financial statements.

b. The computation of depreciation or use allowances shall be based on the acquisition cost of the assets involved. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used. The value of an asset donated to the governmental unit by an unrelated third party shall be its fair market value at the time of donation. Governmental or quasi-governmental organizations located within the same State shall not be considered unrelated third parties for this purpose.

c. The computation of depreciation or use allowances will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the governmental unit, or a related donor organization, in satisfaction of a matching

requirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvements (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition costs. The use allowance for equipment will be computed at an annual rate not exceeding 6 2/3 percent of acquisition cost. When the use allowance method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g., plumbing system, heating and air condition, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, modular furniture, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the destruction of, or need for costly or extensive alterations or repairs, to the building or the equipment. Equipment that meets these criteria will be subject to the 6 2/3 percent equipment use allowance limitation.

e. Where the depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, historical usage patterns, technological developments, and the renewal and replacement policies of the governmental unit followed for the individual items or classes of assets involved. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight line method of depreciation shall be used. Depreciation methods once used shall not be changed unless approved by the Federal cognizant or awarding agency. When the depreciation method is introduced for application to an asset previously subject to a use allowance, the annual depreciation charge thereon may not exceed the amount that would have resulted had the depreciation method been in effect from the date of acquisition of the asset. The combination of use allowances and depreciation applicable to the asset shall not exceed the total acquisition cost of the asset or fair market value at time of donation.

f. When the depreciation method is used for buildings, a building's shell may be segregated from the major component of the building (e.g., plumbing system, heating, and air conditioning system, etc.) and each major component depreciated over its estimated useful life, or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

g. A reasonable use allowance may be negotiated for any assets that are considered to be fully depreciated, after taking into consideration the amount of depreciation previously charged to the government, the estimated useful life remaining at the time of negotiation, the effect of any increased maintenance charges, decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

h. Charges for use allowances or depreciation must be supported by adequate property records. Physical inventories must be taken at least once every two years (a statistical sampling approach is acceptable) to ensure that assets exist, and are in use. Governmental units will manage equipment in accordance with State laws and procedures. When the depreciation method is followed, depreciation records indicating the amount of depreciation taken each period must also be maintained.

16. **Disbursing service.** The cost of disbursing funds by the Treasurer or other designated officer is allowable.

17. **Employee morale, health, and welfare costs.** The costs of health or first-aid clinics and/or infirmaries, recreational facilities, employee counseling services, employee information publications, and any related expenses incurred in accordance with a governmental unit's policy are allowable. Income generated from any of these activities will be offset against expenses.

18. **Entertainment.** Costs of entertainment, including amusement, diversion, and social activities and any costs directly associated with such costs (such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities) are unallowable.

19. **Equipment and other capital expenditures.**

a. As used in this section the following terms have the meanings as set forth below:

(1) "Capital expenditure" means the cost of the asset including the cost to put it in place. Capital expenditure for equipment means the net invoice price of the equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in transit insurance, freight, and installation may be included in, or excluded from, capital expenditure cost in accordance with the governmental unit's regular accounting practices.

(2) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals the lesser of (a) the capitalization level established by the governmental unit for financial statement purposes, or (b) \$5000.

(3) "Other capital assets" mean buildings, land, and improvements to buildings or land that materially increase their value or useful life.

b. Capital expenditures which are not charged directly to a Federal award may be recovered through use allowances or depreciation on buildings, capital improvements, and equipment (see section 15). See also section 38 for allowability of rental costs for buildings and equipment.

c. Capital expenditures for equipment, including replacement equipment, other capital assets, and improvements which materially increase the value or useful life of

equipment or other capital assets are allowable as a direct cost when approved by the awarding agency. Federal awarding agencies are authorized at their option to waive or delegate this approval requirement.

d. Items of equipment with an acquisition cost of less than \$5000 are considered to be supplies and are allowable as direct costs of Federal awards without specific awarding agency approval.

e. The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by (1) continuing to claim the otherwise allowable use allowances or depreciation charges on the equipment or by (2) amortizing the amount to be written off over a period of years negotiated with the cognizant agency.

f. When replacing equipment purchased in whole or in part with Federal funds, the governmental unit may use the equipment to be replaced as a trade-in or sell the property and use the proceeds to offset the cost of the replacement property.

20. Fines and penalties. Fines, penalties, damages, and other settlements resulting from violations (or alleged violations) of, or failure of the governmental unit to comply with, Federal, State, local, or Indian tribal laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the Federal award or written instructions by the awarding agency authorizing in advance such payments.

21. Fund raising and investment management costs.

a. Costs of organized fund raising, including financial campaigns, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable, regardless of the purpose for which the funds will be used.

b. Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable. However, such costs associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this Circular are allowable.

c. Fund raising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in subsection C.3.b. of Attachment A.

22. Gains and losses on disposition of depreciable property and other capital assets and substantial relocation of Federal programs.

a. (1) Gains and losses on the sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under sections 15 and 19.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in subsection 25.d.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

b. Substantial relocation of Federal awards from a facility where the Federal Government participated in the financing to another facility prior to the expiration of the useful life of the financed facility requires Federal agency approval. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation charged to date may require negotiation of space charges for Federal awards.

c. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in subsection a., e.g., land or included in the fair market value used in any adjustment resulting from a relocation of Federal awards covered in subsection b. shall be excluded in computing Federal award costs.

23. General government expenses.

a. The general costs of government are unallowable (except as provided in section 41). These include:

(1) Salaries and expenses of the Office of the Governor of a State or the chief executive of a political subdivision or the chief executives of federally-recognized Indian tribal governments;

(2) Salaries and other expenses of State legislatures, tribal councils, or similar local governmental bodies, such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction;

(3) Cost of the judiciary branch of a government;

(4) Cost of prosecutorial activities unless treated as a direct cost to a specific program when authorized by program regulations (however, this does not preclude the allowability of other legal activities of the Attorney General); and

(5) Other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost in program regulations.

b. For federally-recognized Indian tribal governments and Councils Of Governments (COGs), the portion of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his staff is allowable.

24. Idle facilities and idle capacity.

a. As used in this section the following terms have the meanings set forth below:

(1) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the governmental unit.

(2) "Idle facilities" means completely unused facilities that are excess to the governmental unit's current needs.

(3) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between (a) that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and (b) the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) "Cost of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, and depreciation or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business,

economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

25. Insurance and indemnification.

a. Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.

b. Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with the governmental unit's policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the awarding agency has specifically required or approved such costs.

c. Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award or as described below. However, the Federal Government will participate in actual losses of a self insurance fund that are in excess of reserves. Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

d. Contributions to a reserve for certain self-insurance programs including workers compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the discounted present value of the liability. The rate used for discounting the liability must be determined by giving consideration to such factors as the governmental unit's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims (a) submitted and adjudicated

but not paid, (b) submitted but not adjudicated, and (c) incurred but not submitted. Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the governmental unit. If individual departments or agencies of the governmental unit experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund), refunds shall be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer.

e. Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., subsection 11.f. for post retirement health benefits), are allowable in the year of payment

provided (1) the governmental unit follows a consistent costing policy and (2) they are allocated as a general administrative expense to all activities of the governmental unit.

f. Insurance refunds shall be credited against insurance costs in the year the refund is received.

g. Indemnification includes securing the governmental unit against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the governmental unit only to the extent expressly provided for in the Federal award, except as provided in subsection d.

h. Costs of commercial insurance that protects against the costs of the contractor for correction of the contractor's own defects in materials or workmanship are unallowable.

26.

Interest.

a. Costs incurred for interest on borrowed capital or the use of a governmental unit's own funds, however represented, are unallowable except as specifically provided in subsection b. or authorized by Federal legislation.

b. Financing costs (including interest) paid or incurred on or after the effective date of this Circular associated with the otherwise allowable costs of building acquisition, construction, or fabrication, reconstruction or remodeling completed on or after October 1, 1980 is allowable, subject to the conditions in (1)-(4). Financing costs (including interest) paid or incurred on or after the effective date of this Circular associated with otherwise allowable costs of equipment is allowable, subject to the conditions in (1)-(4).

(1) The financing is provided (from other than tax or user fee sources) by a bona fide third party external to the governmental unit;

(2) The assets are used in support of Federal awards;

(3) Earnings on debt service reserve funds or interest earned on borrowed funds pending payment of the construction or acquisition costs are used to offset the current period's cost or the capitalized interest, as appropriate. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(4) Governmental units will negotiate the amount of allowable interest whenever cash payments (interest, depreciation, use allowances, and contributions) exceed the governmental unit's cash payments and other contributions attributable to that portion of real property used for Federal awards.

27. Lobbying. The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans shall be governed by the common rule, "New Restrictions on Lobbying" published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget "Government-wide Guidance for New Restrictions on Lobbying" and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), and 57 FR 1772 (January 15, 1992), respectively.

28. Maintenance, operations, and repairs. Unless prohibited by law, the cost of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, necessary maintenance, normal repairs and alterations, and the like are allowable to the extent that they: (1) keep property (including Federal property, unless otherwise provided for) in an efficient operating condition, (2) do not add to the permanent value of property or appreciably prolong its intended life, and (3) are not otherwise included in rental or other charges for space. Costs which add to the permanent value of property or appreciably prolong its intended life shall be treated as capital expenditures (see sections 15 and 19).

29. Materials and supplies. The cost of materials and supplies is allowable. Purchases should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing, consistently applied. Incoming transportation charges are a proper part of materials and supply costs.

30. Memberships, subscriptions, and professional activities.

a. Costs of the governmental unit's memberships in business, technical, and professional organizations are allowable.

- b. Costs of the governmental unit's subscriptions to business, professional, and technical periodicals are allowable.
- c. Costs of meetings and conferences where the primary purpose is the dissemination of technical information, including meals, transportation, rental of meeting facilities, and other incidental costs are allowable.
- d. Costs of membership in civic and community, social organizations are allowable as a direct cost with the approval of the Federal awarding agency.
- e. Costs of membership in organizations substantially engaged in lobbying are unallowable.

31. **Motor pools.** The costs of a service organization which provides automobiles to user governmental units at a mileage or fixed rate and/or provides vehicle maintenance, inspection, and repair services are allowable.

32. **Pre-award costs.** Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

33. Professional service costs.

- a. Cost of professional and consultant services rendered by persons or organizations that are members of a particular profession or possess a special skill, whether or not officers or employees of the governmental unit, are allowable, subject to section 14 when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government.
- b. Retainer fees supported by evidence of bona fide services available or rendered are allowable.

34. **Proposal costs.** Costs of preparing proposals for potential Federal awards are allowable. Proposal costs should normally be treated as indirect costs and should be allocated to all activities of the governmental unit utilizing the cost allocation plan and indirect cost rate proposal. However, proposal costs may be charged directly to Federal awards with the prior approval of the Federal awarding agency.

35. **Publication and printing costs.** Publication costs, including the costs of printing (including the processes of composition, plate-making, press work, and binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling are allowable.

36. **Rearrangements and alterations.** Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable. Special arrangements and

alterations costs incurred specifically for a Federal award are allowable with the prior approval of the Federal awarding agency.

37. Reconversion costs. Costs incurred in the restoration or rehabilitation of the governmental unit's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

38. Rental costs.

a. Subject to the limitations described in subsections b. through d. of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and, the type, life expectancy, condition, and value of the property leased.

b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the governmental unit continued to own the property.

c. Rental costs under less-than-arms-length leases are allowable only up to the amount that would be allowed had title to the property vested in the governmental unit. For this purpose, less-than-arms-length leases include, but are not limited to, those where:

(1) One party to the lease is able to control or substantially influence the actions of the other;

(2) Both parties are parts of the same governmental unit; or

(3) The governmental unit creates an authority or similar entity to acquire and lease the facilities to the governmental unit and other parties.

d. Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount that would be allowed had the governmental unit purchased the property on the date the lease agreement was executed. This amount would include expenses such as depreciation or use allowance, maintenance, and insurance. The provisions of Financial Accounting Standards Board Statement 13 shall be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in section 26.

39. Taxes.

a. Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs. This provision becomes effective for taxes paid during the governmental unit's first fiscal year that begins on or

after January 1, 1998, and applies thereafter.

b. Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.

c. This provision does not restrict the authority of Federal agencies to identify taxes where Federal participation is inappropriate. Where the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency may accept a reasonable approximation thereof.

40. **Training.** The cost of training provided for employee development is allowable.

41. **Travel costs.**

a. **General.** Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees traveling on official business. Such costs may be charged on an actual cost basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in non-federally-sponsored activities. Notwithstanding the provisions of section 23, travel costs of officials covered by that section, when specifically related to Federal awards, are allowable with the prior approval of a grantor agency.

b. **Lodging and subsistence.** Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, shall be considered reasonable and allowable only to the extent such costs do not exceed charges normally allowed by the governmental unit in its regular operations as a result of the governmental unit's policy. In the absence of a written governmental unit policy regarding travel costs, the rates and amounts established under subchapter I of Chapter 57 of Title 5, United States Code "Travel and Subsistence Expenses; Mileage Allowances," or by the Administrator of General Services, or the President (or his designee) pursuant to any provisions of such subchapter shall be used as guidance for travel under Federal awards (41 U.S.C. 420, "Travel Expenses of Government Contractors").

c. **Commercial air travel.** Airfare costs in excess of the customary standard (coach or equivalent) airfare, are unallowable except when such accommodations would: require circuitous routing, require travel during unreasonable hours, excessively prolong travel, greatly increase the duration of the flight, result in increased cost that would offset transportation savings, or offer accommodations not reasonably adequate for the medical needs of the traveler. Where a governmental unit can reasonably demonstrate to the awarding agency either the nonavailability of customary standard airfare or Federal Government contract airfare for individual trips or, on an overall basis, that it is the governmental unit's practice to make routine use of such airfare, specific determinations of nonavailability will generally not be questioned by the Federal Government, unless a pattern of avoidance is detected. However, in order for airfare costs in excess of the customary standard commercial airfare to be allowable,

e.g., use of first-class airfare, the governmental unit must justify and document on a case-by-case basis the applicable condition(s) set forth above.

d. Air travel by other than commercial carrier. Cost of travel by governmental unit-owned, -leased, or -chartered aircraft, as used in this section, includes the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, interest, insurance, and other related costs. Costs of travel via governmental unit-owned, -leased, or -chartered aircraft are unallowable to the extent they exceed the cost of allowable commercial air travel, as provided for in subsection c.

42. Underrecovery of costs under Federal agreements. Any excess costs over the Federal contribution under one award agreement are unallowable under other award agreements.

ATTACHMENT C
Circular No. A-87

STATE/LOCAL-WIDE CENTRAL SERVICE COST ALLOCATION PLANS

TABLE	OF	CONTENTS
A.		General
B. Definitions		
1. Billed central services		
2. Allocated central services		
3.	Agency or operating	agency
C.	Scope of the Central Service Cost Allocation Plans	
D.	Submission	Requirements
E. Documentation Requirements for Submitted Plans		
1. General		
2. Allocated central services		
3. Billed services		
a. General		
b. Internal service funds		
c. Self-insurance funds		
d. Fringe benefits		
4.	Required	certification
F.	Negotiation and Approval of Central Service Plans	
G. Other Policies		
1. Billed central service activities		
2. Working capital reserves		
3. Carry-forward adjustments of allocated central service costs		

4. Adjustments of billed central services
5. Records retention
6. Appeals
- 7.

OMB

assistance

A.

General.

1. Most governmental units provide certain services, such as motor pools, computer centers, purchasing, accounting, etc., to operating agencies on a centralized basis. Since federally-supported awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process. All costs and other data used to distribute the costs included in the plan should be supported by formal accounting and other records that will support the propriety of the costs assigned to Federal awards.

2. Guidelines and illustrations of central service cost allocation plans are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

B.

Definitions.

1. "Billed central services" means central services that are billed to benefitted agencies and/or programs on an individual fee-for-service or similar basis. Typical examples of billed central services include computer services, transportation services, insurance, and fringe benefits.

2. "Allocated central services" means central services that benefit operating agencies but are not billed to the agencies on a fee-for-service or similar basis. These costs are allocated to benefitted agencies on some reasonable basis. Examples of such services might include general accounting, personnel administration, purchasing, etc.

3. "Agency or operating agency" means an organizational unit or sub-division within a governmental unit that is responsible for the performance or administration of awards or activities of the governmental unit.

C. **Scope of the Central Service Cost Allocation Plans.** The central service cost allocation plan will include all central service costs that will be claimed (either as a billed or an allocated cost) under Federal awards and will be documented as described in section E. Costs of central services omitted from the plan will not be reimbursed.

D.

Submission

Requirements.

1. Each State will submit a plan to the Department of Health and Human Services for each year in which it claims central service costs under Federal awards. The plan should include (a) a projection of the next year's allocated central service cost (based either on actual costs for the most recently completed year or the budget projection for the coming year), and (b) a reconciliation of actual allocated central service costs to the estimated costs used for either the most recently completed year or the year immediately preceding the most recently completed year.

2. Each local government that has been designated as a "major local government" by the Office of Management and Budget (OMB) is also required to submit a plan to its cognizant agency annually. OMB periodically lists major local governments in the **Federal Register**.

3. All other local governments claiming central service costs must develop a plan in accordance with the requirements described in this Circular and maintain the plan and related supporting documentation for audit. These local governments are not required to submit their plans for Federal approval unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating indirect cost rates and/or monitoring the sub-recipient's plan.

4. All central service cost allocation plans will be prepared and, when required, submitted within six months prior to the beginning of each of the governmental unit's fiscal years in which it proposes to claim central service costs. Extensions may be granted by the cognizant agency on a case-by-case basis.

E. Documentation Requirements for Submitted Plans. The documentation requirements described in this section may be modified, expanded, or reduced by the cognizant agency on a case-by-case basis. For example, the requirements may be reduced for those central services which have little or no impact on Federal awards. Conversely, if a review of a plan indicates that certain additional information is needed, and will likely be needed in future years, it may be routinely requested in future plan submissions. Items marked with an asterisk (*) should be submitted only once; subsequent plans should merely indicate any changes since the last plan.

1. General. All proposed plans must be accompanied by the following: an organization chart sufficiently detailed to show operations including the central service activities of the State/local government whether or not they are shown as benefiting from central service functions; a copy of the Comprehensive Annual Financial Report (or a copy of the Executive Budget if budgeted costs are being proposed) to support the allowable costs of each central service activity included in the plan; and, a certification (see subsection 4.) that the plan was prepared in accordance with this Circular, contains only allowable costs, and was prepared in a manner that treated similar costs consistently among the various Federal awards and between Federal and non-Federal awards/activities.

2. Allocated central services. For each allocated central service, the plan must also include the following: a brief description of the service*, an identification of the unit rendering the service and the operating agencies receiving the service, the items of expense included in the cost of the service, the method used to distribute the cost of the service to benefitted agencies, and a summary schedule showing the allocation of each service to the specific benefitted

agencies. If any self-insurance funds or fringe benefits costs are treated as allocated (rather than billed) central services, documentation discussed in subsections 3.b. and c. shall also be included.

3. Billed services.

a. General. The information described below shall be provided for all billed central services, including internal service funds, self-insurance funds, and fringe benefit funds.

b. Internal service funds.

(1) For each internal service fund or similar activity with an operating budget of \$5 million or more, the plan shall include: a brief description of each service; a balance sheet for each fund based on individual accounts contained in the governmental unit's accounting system; a revenue/expenses statement, with revenues broken out by source, e.g., regular billings, interest earned, etc.; a listing of all non-operating transfers (as defined by Generally Accepted Accounting Principles (GAAP)) into and out of the fund; a description of the procedures (methodology) used to charge the costs of each service to users, including how billing rates are determined; a schedule of current rates; and, a schedule comparing total revenues (including imputed revenues) generated by the service to the allowable costs of the service, as determined under this Circular, with an explanation of how variances will be handled.

(2) Revenues shall consist of all revenues generated by the service, including unbilled and uncollected revenues. If some users were not billed for the services (or were not billed at the full rate for that class of users), a schedule showing the full imputed revenues associated with these users shall be provided. Expenses shall be broken out by object cost categories (e.g., salaries, supplies, etc.).

c. Self-insurance funds. For each self-insurance fund, the plan shall include: the fund balance sheet; a statement of revenue and expenses including a summary of billings and claims paid by agency; a listing of all non-operating transfers into and out of the fund; the type(s) of risk(s) covered by the fund (e.g., automobile liability, workers' compensation, etc.); an explanation of how the level of fund contributions are determined, including a copy of the current actuarial report (with the actuarial assumptions used) if the contributions are determined on an actuarial basis; and, a description of the procedures used to charge or allocate fund contributions to benefitted activities. Reserve levels in excess of claims (1) submitted and adjudicated but not paid, (2) submitted but not adjudicated, and (3) incurred but not submitted must be identified and explained.

d. Fringe benefits. For fringe benefit costs, the plan shall include: a listing of fringe benefits provided to covered employees, and the overall annual cost of each type of benefit; current fringe benefit policies*; and procedures used to charge or allocate the costs of the benefits to benefitted activities. In addition, for pension and post-retirement health insurance plans, the following information shall be provided: the governmental unit's funding policies, e.g., legislative bills, trust agreements, or State-mandated contribution rules, if different from actuarially determined rates; the pension plan's costs accrued for the year; the amount funded, and date(s) of funding; a copy of the current actuarial report (including the actuarial assumptions); the plan trustee's report; and, a schedule from the activity showing the value of the interest cost associated with late funding.

4. Required certification. Each central service cost allocation plan will be accompanied by a certification in the following form:

CERTIFICATE OF COST ALLOCATION PLAN

This is to certify that I have reviewed the cost allocation plan submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish cost allocations or billings for [identify period covered by plan] are allowable in accordance with the requirements of OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," and the Federal award(s) to which they apply. Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the awards to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

F. Negotiation and Approval of Central Service Plans.

1. All proposed central service cost allocation plans that are required to be submitted will be reviewed, negotiated, and approved by the Federal cognizant agency on a timely basis. The cognizant agency will review the proposal within six months of

receipt of the proposal and either negotiate/approve the proposal or advise the governmental unit of the additional documentation needed to support/evaluate the proposed plan or the changes required to make the proposal acceptable. Once an agreement with the governmental unit has been reached, the agreement will be accepted and used by all Federal agencies, unless prohibited or limited by statute. Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special consideration, the funding agency will, prior to the time the plans are negotiated, notify the cognizant agency.

2. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The results of the negotiation shall be made available to all Federal agencies for their use.

3. Negotiated cost allocation plans based on a proposal later found to have included costs that: (a) are unallowable (i) as specified by law or regulation, (ii) as identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards, shall be adjusted, or a refund shall be made at the option of the Federal cognizant agency. These adjustments or refunds are designed to correct the plans and do not constitute a reopening of the negotiation.

G. Other Policies.

1. Billed central service activities. Each billed central service activity must separately account for all revenues (including imputed revenues) generated by the service, expenses incurred to furnish the service, and profit/loss.

2. Working capital reserves. Internal service funds are dependent upon a reasonable level of working capital reserve to operate from one billing cycle to the next. Charges by an internal service activity to provide for the establishment and maintenance of a reasonable level of working capital reserve, in addition to the full recovery of costs, are allowable. A working capital reserve as part of retained earnings of up to 60 days cash expenses for normal operating purposes is considered reasonable. A working capital reserve exceeding 60 days may be approved by the cognizant Federal agency in exceptional cases.

3. Carry-forward adjustments of allocated central service costs. Allocated central service costs are usually negotiated and approved for a future fiscal year on a "fixed with carry-forward" basis. Under this procedure, the fixed amounts for the future year covered by agreement are not subject to adjustment for that year. However, when the actual costs of the year involved become known, the differences between the fixed amounts previously approved and the actual costs will be carried forward and used as an adjustment to the fixed amounts established for a later year. This "carry-forward" procedure applies to all central services whose costs were fixed in the approved plan. However, a carry-forward adjustment is not permitted, for a central service activity that

was not included in the approved plan, or for unallowable costs that must be reimbursed immediately.

4. Adjustments of billed central services. Billing rates used to charge Federal awards shall be based on the estimated costs of providing the services, including an estimate of the allocable central service costs. A comparison of the revenue generated by each billed service (including total revenues whether or not billed or collected) to the actual allowable costs of the service will be made at least annually, and an adjustment will be made for the difference between the revenue and the allowable costs. These adjustments will be made through one of the following adjustment methods: (a) a cash refund to the Federal Government for the Federal share of the adjustment, (b) credits to the amounts charged to the individual programs, (c) adjustments to future billing rates, or (d) adjustments to allocated central service costs. Adjustments to allocated central services will not be permitted where the total amount of the adjustment for a particular service (Federal share and non-Federal) share exceeds \$500,000.

5. Records retention. All central service cost allocation plans and related documentation used as a basis for claiming costs under Federal awards must be retained for audit in accordance with the records retention requirements contained in the Common Rule.

6. Appeals. If a dispute arises in the negotiation of a plan between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

7. OMB assistance. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

ATTACHMENT D
Circular No. A-87

PUBLIC ASSISTANCE COST ALLOCATION PLANS

TABLE	OF	CONTENTS
A.		General
B. Definitions		
1. State public assistance agency		
2. State public assistance agency costs		
C.		Policy
D. Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans		

E. Review of Implementation of Approved Plans

F. Unallowable Costs

A. **General.** Federally-financed programs administered by State public assistance agencies are funded predominately by the Department of Health and Human Services (HHS). In support of its stewardship requirements, HHS has published requirements for the development, documentation, submission, negotiation, and approval of public assistance cost allocation plans in Subpart E of 45 CFR Part 95. All administrative costs (direct and indirect) are normally charged to Federal awards by implementing the public assistance cost allocation plan. This Attachment extends these requirements to all Federal agencies whose programs are administered by a State public assistance agency. Major federally-financed programs typically administered by State public assistance agencies include: Aid to Families with Dependent Children, Medicaid, Food Stamps, Child Support Enforcement, Adoption Assistance and Foster Care, and Social Services Block Grant.

B. **Definitions.**

1. "State public assistance agency" means a State agency administering or supervising the administration of one or more public assistance programs operated by the State as identified in Subpart E of 45 CFR Part 95. For the purpose of this Attachment, these programs include all programs administered by the State public assistance agency.

2. "State public assistance agency costs" means all costs incurred by, or allocable to, the State public assistance agency, except expenditures for financial assistance, medical vendor payments, food stamps, and payments for services and goods provided directly to program recipients.

C. **Policy.** State public assistance agencies will develop, document and implement, and the Federal Government will review, negotiate, and approve, public assistance cost allocation plans in accordance with Subpart E of 45 CFR Part 95. The plan will include all programs administered by the State public assistance agency. Where a letter of approval or disapproval is transmitted to a State public assistance agency in accordance with Subpart E, the letter will apply to all Federal agencies and programs. The remaining sections of this Attachment (except for the requirement for certification) summarize the provisions of Subpart E of 45 CFR Part 95.

D. **Submission, Documentation, and Approval of Public Assistance Cost Allocation Plans.**

1. State public assistance agencies are required to promptly submit amendments to the cost allocation plan to HHS for review and approval.

2. Under the coordination process outlined in subsection E, affected Federal agencies will review all new plans and plan amendments and provide comments, as

appropriate, to HHS. The effective date of the plan or plan amendment will be the first day of the quarter following the submission of the plan or amendment, unless another date is specifically approved by HHS. HHS, as the cognizant agency acting on behalf of all affected Federal agencies, will, as necessary, conduct negotiations with the State public assistance agency and will inform the State agency of the action taken on the plan or plan amendment.

E. Review of Implementation of Approved Plans.

1. Since public assistance cost allocation plans are of a narrative nature, the review during the plan approval process consists of evaluating the appropriateness of the proposed groupings of costs (cost centers) and the related allocation bases. As such, the Federal Government needs some assurance that the cost allocation plan has been implemented as approved. This is accomplished by reviews by the funding agencies, single audits, or audits conducted by the cognizant audit agency.

2. Where inappropriate charges affecting more than one funding agency are identified, the cognizant HHS cost negotiation office will be advised and will take the lead in resolving the issue(s) as provided for in Subpart E of 45 CFR Part 95.

3. If a dispute arises in the negotiation of a plan or from a disallowance involving two or more funding agencies, the dispute shall be resolved in accordance with the appeals

procedures set out in 45 CFR Part 75. Disputes involving only one funding agency will be resolved in accordance with the funding agency's appeal process.

4. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, the Office of Management and Budget will lend assistance, as required, to resolve such problems in a timely manner.

F. Unallowable Costs. Claims developed under approved cost allocation plans will be based on allowable costs as identified in this Circular. Where unallowable costs have been claimed and reimbursed, they will be refunded to the program that reimbursed the unallowable cost using one of the following methods: (a) a cash refund, (b) offset to a subsequent claim, or (c) credits to the amounts charged to individual awards.

ATTACHMENT E
Circular No. A-87

STATE AND LOCAL INDIRECT COST RATE PROPOSALS

TABLE	OF	CONTENTS
A.		General
B. Definitions		
1. Indirect cost rate proposal		

2. Indirect cost rate
3. Indirect cost pool
4. Base
5. Predetermined rate
6. Fixed rate
7. Provisional rate
8. Final rate

9. Base period

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General
2. Simplified method
3. Multiple allocation base method
4. Special indirect cost rates

D. Submission and Documentation of Proposals

1. Submission of indirect cost rate proposals
2. Documentation of proposals
3. Required certification

E. Negotiation and Approval of Rates

F. Other Policies

1. Fringe benefit rates
2. Billed services provided by the grantee agency
3. Indirect cost allocations not using rates
4. Appeals
5. Collections of unallowable costs and erroneous payments
6. OMB assistance

A. **General.**

1. Indirect costs are those that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned directly to Federal awards and other activities as appropriate, indirect costs are those remaining to be allocated to benefitted cost objectives. A cost may not be allocated to a Federal award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to a Federal award as a direct cost.

2. Indirect costs include (a) the indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and (b) the costs of central governmental services distributed through the central service cost allocation plan (as described in Attachment C) and not otherwise treated as direct costs.

3. Indirect costs are normally charged to Federal awards by the use of an indirect cost rate. A separate indirect cost rate(s) is usually necessary for each department or agency of the governmental unit claiming indirect costs under Federal awards. Guidelines and illustrations of indirect cost proposals are provided in a brochure published by the Department of Health and Human Services entitled "A Guide for State and Local Government Agencies: Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government." A copy of this brochure may be obtained from the Superintendent of Documents, U.S. Government Printing Office.

4. Because of the diverse characteristics and accounting practices of governmental units, the types of costs which may be classified as indirect costs cannot be specified in all situations. However, typical examples of indirect costs may include certain State/local-wide central service costs, general administration of the grantee department or agency, accounting and personnel services performed within the grantee department or agency, depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, etc.

5. This Attachment does not apply to State public assistance agencies. These agencies should refer instead to Attachment D.

B.

Definitions.

1. "Indirect cost rate proposal" means the documentation prepared by a governmental unit or subdivision thereof to substantiate its request for the establishment of an indirect cost rate.

2. "Indirect cost rate" is a device for determining in a reasonable manner the proportion of indirect costs each program should bear. It is the ratio (expressed as a percentage) of the indirect costs to a direct cost base.

3. "Indirect cost pool" is the accumulated costs that jointly benefit two or more programs or other cost objectives.

4. "Base" means the accumulated direct costs (normally either total direct salaries and wages or total direct costs exclusive of any extraordinary or distorting expenditures) used to distribute indirect costs to individual Federal awards. The direct cost base selected should result in each award bearing a fair share of the indirect costs in reasonable relation to the benefits received from the costs.

5. "Predetermined rate" means an indirect cost rate, applicable to a specified current or future period, usually the governmental unit's fiscal year. This rate is based on an estimate of the costs to be incurred during the period. Except under very unusual circumstances, a predetermined rate is not subject to adjustment. (Because of legal constraints, predetermined rates are not permitted for Federal contracts; they may, however, be used for grants or cooperative agreements.) Predetermined rates may not be used by governmental units that have not submitted and negotiated the rate with the cognizant agency. In view of the potential advantages offered by this

procedure, negotiation of predetermined rates for indirect costs for a period of two to four years should be the norm in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting periods.

6. "Fixed rate" means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual, allowable costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.

7. "Provisional rate" means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on Federal awards pending the establishment of a "final" rate for that period.

8. "Final rate" means an indirect cost rate applicable to a specified past period which is based on the actual allowable costs of the period. A final audited rate is not subject to adjustment.

9. "Base period" for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to activities performed in that period. The base period normally should coincide with the governmental unit's fiscal year, but in any event, shall be so selected as to avoid inequities in the allocation of costs.

C. Allocation of Indirect Costs and Determination of Indirect Cost Rates.

1. General.

a. Where a governmental unit's department or agency has only one major function, or where all its major functions benefit from the indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures as described in subsection 2.

b. Where a governmental unit's department or agency has several major functions which benefit from its indirect costs in varying degrees, the allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefitted functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in subsections 2, 3 and 4.

2. Simplified method.

a. Where a grantee agency's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (1) classifying the grantee agency's total costs for the base period as either direct or indirect, and (2) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual Federal awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where a governmental unit's department or agency has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to that department or agency is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs must be included in the direct costs if they represent activities to which indirect costs are properly allocable.

c. The distribution base may be (1) total direct costs (excluding capital expenditures and other distorting items, such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution.

3. Multiple allocation base method.

a. Where a grantee agency's indirect costs benefit its major functions in varying degrees, such costs shall be accumulated into separate cost groupings. Each grouping shall then be allocated individually to benefitted functions by means of a base which best measures the relative benefits.

b. The cost groupings should be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping should constitute a pool of expenses that are of like character in terms of the functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The number of separate groupings should be held within practical limits, taking into consideration the materiality of the amounts involved and the degree of precision needed.

c. Actual conditions must be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitted functions. When an allocation can be made by assignment of a cost grouping directly to the function benefitted, the allocation shall be made in that manner. When the expenses in a grouping are more general in nature, the allocation should be made through the use of a selected base which produces results that are equitable to both the Federal Government and the governmental unit. In general, any cost element or related factor associated with the governmental unit's activities is potentially adaptable for use as an allocation base provided that: (1) it can readily be expressed in terms of dollars or other quantitative measures (total direct costs, direct salaries and wages, staff hours applied, square feet used, hours of usage, number of documents processed, population served, and

the like), and (2) it is common to the benefitted functions during the base period.

d. Except where a special indirect cost rate(s) is required in accordance with subsection 4, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual Federal awards included in that function by use of a single indirect cost rate.

e. The distribution base used in computing the indirect cost rate for each function may be (1) total direct costs (excluding capital expenditures and other distorting items such as pass-through funds, major subcontracts, etc.), (2) direct salaries and wages, or (3) another base which results in an equitable distribution. An indirect cost rate should be developed for each separate indirect cost pool developed. The rate in each case should be stated as the percentage relationship between the particular indirect cost pool and the distribution base identified with that pool.

4. Special indirect cost rates.

a. In some instances, a single indirect cost rate for all activities of a grantee department or agency or for each major function of the agency may not be appropriate. It may not take into account those different factors which may substantially affect the indirect costs applicable to a particular program or group of programs. The factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the organizational arrangements used, or any combination thereof. When a particular award is carried out in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to that award. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided that: (1) the rate differs significantly from the rate which would have been developed under subsections 2. and 3., and (2) the award to which the rate would apply is material in amount.

b. Although this Circular adopts the concept of the full allocation of indirect costs, there are some Federal statutes which restrict the reimbursement of certain indirect costs. Where such restrictions exist, it may be necessary to develop a special rate for the affected award. Where a "restricted rate" is required, the procedure for developing a non-restricted rate will be used except for the additional step of the elimination from the indirect cost pool those costs for which the law prohibits reimbursement.

D. Submission and Documentation of Proposals.

1. Submission of indirect cost rate proposals.

a. All departments or agencies of the governmental unit desiring to claim indirect costs under Federal awards must prepare an indirect cost rate proposal and related documentation to support those costs. The proposal and related documentation must be retained for audit in accordance with the records retention requirements contained

b. A governmental unit for which a cognizant agency assignment has been specifically designated must submit its indirect cost rate proposal to its cognizant agency. The Office of Management and Budget (OMB) will periodically publish lists of governmental units identifying the appropriate Federal cognizant agencies. The cognizant agency for all governmental units or agencies not identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. In these cases, a governmental unit must develop an indirect cost proposal in accordance with the requirements of this Circular and maintain the proposal and related supporting documentation for audit. These governmental units are not required to submit their proposals unless they are specifically requested to do so by the cognizant agency. Where a local government only receives funds as a sub-recipient, the primary recipient will be responsible for negotiating and/or monitoring the sub-recipient's plan.

c. Each Indian tribal government desiring reimbursement of indirect costs must submit its indirect cost proposal to the Department of the Interior (its cognizant Federal agency).

d. Indirect cost proposals must be developed (and, when required, submitted) within six months after the close of the governmental unit's fiscal year, unless an exception is approved by the cognizant Federal agency. If the proposed central service cost allocation plan for the same period has not been approved by that time, the indirect cost proposal may be prepared including an amount for central services that is based on the latest federally-approved central service cost allocation plan. The difference between these central service amounts and the amounts ultimately approved will be compensated for by an adjustment in a subsequent period.

2. Documentation of proposals. The following shall be included with each indirect cost proposal:

a. The rates proposed, including subsidiary work sheets and other relevant data, cross referenced and reconciled to the financial data noted in subsection b. Allocated central service costs will be supported by the summary table included in the approved central service cost allocation plan. This summary table is not required to be submitted with the indirect cost proposal if the central service cost allocation plan for the same fiscal year has been approved by the cognizant agency and is available to the funding agency.

b. A copy of the financial data (financial statements, comprehensive annual financial report, executive budgets, accounting reports, etc.) upon which the rate is based. Adjustments resulting from the use of unaudited data will be recognized, where appropriate, by the Federal cognizant agency in a subsequent proposal.

c. The approximate amount of direct base costs incurred under Federal awards. These costs should be broken out between salaries and wages and other direct costs.

d. A chart showing the organizational structure of the agency during the period for which the proposal applies, along with a functional statement(s) noting the duties and/or responsibilities of all units that comprise the agency. (Once this is submitted, only revisions need be submitted with subsequent proposals.)

3. Required certification. Each indirect cost rate proposal shall be accompanied by a certification in the following form:

CERTIFICATE OF INDIRECT COSTS

This is to certify that I have reviewed the indirect cost rate proposal submitted herewith and to the best of my knowledge and belief:

(1) All costs included in this proposal [identify date] to establish billing or final indirect costs rates for [identify period covered by rate] are allowable in accordance with the requirements of the Federal award(s) to which they apply and OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments." Unallowable costs have been adjusted for in allocating costs as indicated in the cost allocation plan.

(2) All costs included in this proposal are properly allocable to Federal awards on the basis of a beneficial or causal relationship between the expenses incurred and the agreements to which they are allocated in accordance with applicable requirements. Further, the same costs that have been treated as indirect costs have not been claimed as direct costs. Similar types of costs have been accounted for consistently and the Federal Government will be notified of any accounting changes that would affect the predetermined rate.

I declare that the foregoing is true and correct.

Governmental Unit: _____

Signature: _____

Name of Official: _____

Title: _____

Date of Execution: _____

E. Negotiation and Approval of Rates.

1. Indirect cost rates will be reviewed, negotiated, and approved by the cognizant Federal agency on a timely basis. Once a rate has been agreed upon, it will be accepted and used by all Federal agencies unless prohibited or limited by statute.

Where a Federal funding agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates, the funding agency will, prior to the time the rates are negotiated, notify the cognizant Federal agency.

2. The use of predetermined rates, if allowed, is encouraged where the cognizant agency has reasonable assurance based on past experience and reliable projection of the grantee agency's costs, that the rate is not likely to exceed a rate based on actual costs. Long-term agreements utilizing predetermined rates extending over two or more years are encouraged, where appropriate.

3. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the governmental unit. This agreement will be subject to re-opening if the agreement is subsequently found to violate a statute, or the information upon which the plan was negotiated is later found to be materially incomplete or inaccurate. The agreed upon rates shall be made available to all Federal agencies for their use.

4. Refunds shall be made if proposals are later found to have included costs that (a) are unallowable (i) as specified by law or regulation, (ii) as identified in Attachment B of this Circular, or (iii) by the terms and conditions of Federal awards, or (b) are unallowable because they are clearly not allocable to Federal awards. These adjustments or refunds will be made regardless of the type of rate negotiated (predetermined, final, fixed, or provisional).

F. Other Policies.

1. Fringe benefit rates. If overall fringe benefit rates are not approved for the governmental unit as part of the central service cost allocation plan, these rates will be reviewed, negotiated and approved for individual grantee agencies during the indirect cost negotiation process. In these cases, a proposed fringe benefit rate computation should accompany the indirect cost proposal. If fringe benefit rates are not used at the grantee agency level (i.e., the agency specifically identifies fringe benefit costs to individual employees), the governmental unit should so advise the cognizant agency.

2. Billed services provided by the grantee agency. In some cases, governmental units provide and bill for services similar to those covered by central service cost allocation plans (e.g., computer centers). Where this occurs, the governmental unit should be guided by the requirements in Attachment C relating to the development of billing rates and documentation requirements, and should advise the cognizant agency of any billed services. Reviews of these types of services (including reviews of costing/billing methodology, profits or losses, etc.) will be made on a case-by-case basis as warranted by the circumstances involved.

3. Indirect cost allocations not using rates. In certain situations, a governmental unit, because of the nature of its awards, may be required to develop a cost allocation plan that distributes indirect (and, in some cases, direct) costs to the specific funding sources. In these cases, a narrative cost allocation methodology should be developed, documented, maintained for audit, or submitted, as appropriate, to the cognizant agency for review, negotiation, and approval.

4. Appeals. If a dispute arises in a negotiation of an indirect cost rate (or other rate) between the cognizant agency and the governmental unit, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

5. Collection of unallowable costs and erroneous payments. Costs specifically identified as unallowable and charged to Federal awards either directly or indirectly will be refunded (including interest chargeable in accordance with applicable Federal agency regulations).

6. OMB assistance. To the extent that problems are encountered among the Federal agencies and/or governmental units in connection with the negotiation and approval process, OMB will lend assistance, as required, to resolve such problems in a timely manner.

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Exhibit J

OMB CIRCULAR NO. A-122

**COST PRINCIPLES FOR STATE,
NON-PROFIT ORGANIZATIONS**

{PRIVATE}OFFICE OF MANAGEMENT AND BUDGET

Cost Principles for Non-Profit Organizations

AGENCY: Office of Management and Budget

ACTION: Final revision of OMB Circular A-122, "Cost Principles for Non-Profit Organizations"

SUMMARY: The Office of Management and Budget (OMB) revises OMB Circular A-122 by amending the definition for equipment; requiring the breakout of indirect costs into two categories (facilities and administration) for certain non-profit organizations; modifying the multiple allocation basis; and, clarifying the treatment of certain cost items.

DATES: The revision is effective on June 1, 1998.

FOR FURTHER INFORMATION CONTACT: Federal agencies should contact Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, (202) 395-3993. Non-Federal organizations should contact the organization's Federal cognizant agency.

SUPPLEMENTARY

INFORMATION:

A. Background

On October 6, 1995, the Office of Management and Budget (OMB) issued a final revision to OMB Circular A-122, "Cost Principles for Non-Profit Organizations," in the **Federal Register** (60 FR 52516) regarding interest allowability. The revision was made in a continuing effort to increase consistency across OMB's cost principles circulars A-122, A-21, "Cost Principles for Educational Institutions," and A-87, "Cost Principles for State, Local and Indian Tribal Governments." To further the goals of consistency, OMB proposed on the same date (60 FR 52522) to revise the definition of equipment, to clarify the treatment of certain types of costs, to modify the multiple allocation base method for computing indirect cost rate(s), and to place an upper-limit on payments of administrative expenses for certain non-profit organizations.

With this final revision, Circular A-122 consists of the Circular as issued in 1980 (45 FR 46022; July 8, 1980), as amended in 1984 (49 FR 18260; April 27, 1984), in 1987 (52 FR 19788; May 27, 1987), in 1995 (60 FR 52516; October 6, 1995), in 1997 (62 FR 45934; August 29, 1997), and in this notice. A recompilation of the entire Circular A-122, with all its amendments, accompanies the notice and is available in electronic form on the OMB Home Page at /OMB.

B. Current Revisions
Circular A-122 is revised in this notice to:

1. Amend the definition of equipment by increasing the capitalization threshold to the lesser amount used for financial statement purposes or \$5,000 (see paragraph 15).

2. Require major non-profit organizations (those receiving more than \$10 million in direct Federal funding) to report indirect cost rates by two major component categories: facilities and administration (see paragraph D, Attachment A).

3. Modify the multiple allocation base method (MAB) to be consistent with OMB Circular A-21 (see paragraph D.3). However, major non-profit organizations are not required to use the multiple allocation base method. MAB remains one of the three available methodologies for computing indirect costs.

4. Clarify the treatment of the following cost items to provide consistency across OMB's cost principles circulars (A-21 and A-87) and the Federal Acquisition Regulations, where applicable:

- Alcoholic beverages
- Advertising and public relations costs
- Organization-furnished automobiles
- Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements
- Housing and living expenses
- Insurance
- Memberships
- Selling or marketing of goods and services
- Severance pay for foreign nationals

OMB is not implementing the proposed restrictions on trustees' travel expenses at non-profit organizations. In line with this decision, and to further consistency between cost circulars, OMB will be amending Circular A-21 to allow trustees' travel expenses.

OMB defers considering an upper-limit on payment of administrative expenses until better data on indirect costs at non-profit organizations are collected.

C. Comments and Responses

OMB received about 185 comments from non-profit organizations, Federal agencies, professional organizations and accounting firms. A summary of comments and OMB's responses are included in this notice. Several comments resulted in modifications to OMB's original proposal.

The comments and OMB's responses are summarized by section as follow.

Equipment

Definition

Comment: Clarification is needed on the treatment of depreciation of those assets which had costs between the old \$500 threshold and the new \$5,000.

Response: In order to clarify the accounting for the undepreciated portion of any equipment costs as a result of a change in capitalization levels, paragraph 15 has been added to explain that the undepreciated amount may be recovered by continuing to claim otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years as negotiated with the Federal cognizant agency.

Comment: Clarification is needed on whether equipment under the \$5,000 threshold, as established by the non-profit organizations' policy, requires Federal approval prior to acquisition.

Response: Equipment under the \$5,000 threshold, as established by the non-profit organization's policy, can be directly charged to sponsored agreements (subparagraph 15.b) without prior Federal approval.

Comment: Current subparagraph 13.b requires prior approval for special purpose equipment, as direct costs, with a unit cost of \$1,000 or more. This requirement is not consistent with the higher threshold of \$5,000 allowed in the proposed revision. This requirement should be revised to be consistent with the proposed revision.

Response: OMB agrees. The Circular is revised to require prior Federal approval only for special purpose equipment with a unit cost of \$5,000 or more.

Unallowable Cost Items

These ten revised cost items are already unallowable under OMB Circulars A-21, "Cost Principles for Educational Institutions," and A-87, "Cost Principles for State, Local and Indian Tribal Governments," and/or the Federal Acquisition Regulations. OMB addressed the issue of trustees' travel in response to the comments received. For the other items, consistency across Federal cost regulations was a more significant issue than most of the commenters' concerns. Comments related to specific cost items are presented below, followed by OMB's responses.

Advertising and Public Relations Costs

Comment: Current paragraph 37, Public information service costs, should be combined with the "Advertising" paragraph to be consistent with other OMB cost principles in Circulars A-21 and A-87.

Response: The commenter is correct. The treatment of public information service costs is now addressed in revised paragraph 1, Advertising and public relations costs. Current paragraph 37 is deleted.

Comment: Clarify the types of activities that are allowable as public relations costs. Public relations costs to carry out certain functions, such as legitimate program

outreach, that are required under sponsored programs and contracts should be allowable.

Response: The Circular is revised to clarify that certain public relations costs for the purpose of communicating specific activities related to the sponsored programs to the public or the press are allowable costs. When they are necessary for program outreach effort as required by sponsored programs, public relations costs are allowable. Costs of advertising and public relations incurred solely to promote the organization are unallowable.

Comment: Clarify whether advertising media costs such as radio and television are allowable.

Response: As long as the public relations costs are specifically required by the sponsored programs or are related to the promotion of sponsored programs, any reasonable advertising media, including magazines, newspapers, radio, television, direct mail, exhibits, and the like, can be used and its costs are allowable. See paragraph 1.a.

Comment: Community relation costs should be allowable as part of program outreach effort for Federal sponsored programs.

Response: Community relations are defined in subparagraph 1.b as "those activities dedicated to maintain the image of the organization or promoting understanding and favorable relations with the community or public at large or any segment of the public." Costs related to community relations are allowable when the costs are required or necessary to the performance of the sponsored programs.

Organization-furnished automobiles for personal use

Comment: For security and economic reasons, non-profit organizations often furnish automobiles and housing for its personnel working on Federal projects (e.g., overseas projects sponsored by the U.S. Agency for International Development or the U.S. State Department). These costs should be allowable as direct costs.

Response: The Circular is revised to allow these costs when they are necessary to perform the Federal projects, particularly the overseas sponsored projects with prior approval by the Federal awarding agency. These costs are allowable only as direct costs to the Federal projects, and not as fringe benefit or indirect costs.

Comment: The Circular should specify which types of automobiles are allowable or unallowable (e.g., cars, vans, trucks and buses).

Response: The types of automobiles are irrelevant for the purpose of determining the allowability of automobile costs. Rather, the determinant factors should be whether the automobile costs are reasonable and necessary for the performance of the Federal projects and authorized by the Federal awarding agency.

Defense and prosecution of criminal and civil proceedings, claims, appeals and

patent

infringements

Comment: Current paragraph 35.d, Professional service costs, should be combined with new paragraph 10.

Response: OMB agrees. Current paragraph 35.d is deleted. Professional service costs related to defense of antitrust suits, prosecution of claims against the Federal Government and patent infringement litigation are discussed in new paragraph 10. Professional service costs incurred for organization and reorganization are discussed in paragraph 31, Organization costs.

Comment: Clarification is needed as to when legal costs related to claims, appeals or proceeding become unallowable. Commenters noted that Federal agencies are inconsistent in the determination of the allowability of legal costs as one agency would allow legal costs up to the point where the case goes out of the Federal agency appeal process and to the courts, whereas other agencies would only allow legal costs through the first phase of appeals within the Federal agency.

Response: The policy makes unallowable legal and related costs for either defending against claims made by the Federal Government or prosecuting claims against the Government. As such, once a final management decision letter is issued by the agency (for example, a disallowance letter), all legal and related costs are unallowable from that point forward. Unallowable costs would include claims and defenses pursued through agencies' formal appeal procedures such as administrative law judges and agency appeal boards. Note that legal and related costs may be allowable if the non-profit organization's position is sustained by the administrative appeal process or an agreement is reached between the organization and the Federal Government (see subparagraphs 10.b, 10.c, 10.d and 10.e). This revision is consistent with the language contained in OMB Circular A-21, "Cost Principles for Educational Institutions."

Comment: Some commenters objected to the proposed 80 percent limitation on reimbursement when the institution is found innocent.

Response: The proposed revision was retained because it provides consistency with procurement contracts. This limitation is based on the statutory language of Public Law 100-700, Major Fraud Act of 1988, November 19, 1988 (41 U.S.C., 256 (k)(5)), which only allows recovery of 80 percent of the legal costs.

Comment: Legal expenses to defend against lawsuits brought by a foreign government for violation of that country's law should be allowable.

Response: The Circular is revised in subparagraph 10.d to authorize Federal agencies to allow legal expenses to defend against lawsuits brought by a foreign government for violation of its law when such costs were necessary or were direct results of the performance of Federal sponsored programs. The same authorizations apply for legal costs for defense against lawsuits brought by state or local governments.

Comment: Legal fees to defend against lawsuits filed by former employees for

termination or by subrecipients should be allowable.

Response: Legal fees incurred in defense of lawsuits not brought by a Federal, State, local or foreign government, except when the suits are brought by former employees under Section 2 of the Major Fraud Act of 1988 (Pub. L. 100-700), are allowable.

Housing and living expenses

Comment: For security and economic reasons, non-profit organizations often furnish automobiles and housing for its personnel working on overseas Federal projects (e.g., overseas projects sponsored by the U.S. Agency for International Development). These costs should be allowable as direct costs.

Response: As previously noted (in the discussion of automobiles), the Circular is revised to allow these costs when they are necessary to perform the Federal projects and when they are approved by the Federal awarding agency. These costs are allowable only as direct costs to the Federal projects, and not as fringe benefit or indirect costs.

Insurance

Comment: General and casualty liability insurance costs for organization's directors and administrators should be allowable.

Response: General and casualty liability insurance costs for organization's directors and administrators are allowable, subject to limitations, as described in subparagraph 22.a.(2). New subparagraph 22.a.(2).f, Insurance against defects, prohibits the reimbursement of costs against Federally sponsored awards for product (or services) liability insurance costs.

Comment: Medical liability insurance costs for participants in Federal training programs should be allowable.

Response: Medical liability insurance costs associated with participants in Federal training programs are allowable to Federal programs as direct costs.

Comment: Malpractice insurance costs for physicians should be direct charged to Federal programs while malpractice insurance costs for nurses or laboratory assistants, which are immaterial in most cases, should be charged as indirect costs.

Response: Subparagraph B.2 of Attachment A provides that when a direct cost is of minor amounts, it may be treated as an indirect cost for reasons of practicality and efficiency, provided that the accounting treatment for such cost is consistently applied to all final cost objectives. Therefore, when malpractice insurance costs for nurses or lab technicians are immaterial in relation to its effect on the overall indirect cost rates of the organization, they may be treated as indirect costs.

Memberships

Comment: Membership costs in civic and community organizations should be allowable.

Response: Membership costs are allowable for business and professional organizations. The Circular is further revised to allow membership costs in civic and community organizations when associations with these organizations are essential to the performance of the Federal programs (as an outreach function). These membership costs must be approved by the Federal cognizant agency.

Comment: Costs of membership in organizations that lobby should be unallowable.

Response: Paragraph 25 of the Circular disallows lobbying costs. Membership dues to lobbying organizations are therefore unallowable. The unallowable portion of membership dues is determined by the percentage of lobbying activities versus other allowable activities of the lobbying organization.

Selling or Marketing of Goods and Services

Comment: Clarification is needed for what types of activities are considered to be the selling or marketing of goods and services.

Response: Selling or marketing of goods and services generally include an organization's efforts to market the organization's products or services such as through advertising, organizational image enhancement, market planning and direct selling. Direct selling efforts are those acts or actions used to induce particular customers to purchase particular products or services of the organization. The allowability provisions for advertising costs are described in paragraph 1.

Comment: The guidelines for selling or marketing of goods and services should be consistent with those in FAR 31.205.38(c)(1).

Response: FAR 31.205.38(c)(1) allows direct selling costs at commercial contractors if they are reasonable in amount. By contrast to the commercial contract context, direct selling costs are generally not considered to be necessary costs for the performance of Federal sponsored programs by non-profit organizations. In those cases where they are essential for certain Federal sponsored programs, these costs can be charged as direct costs to the Federal sponsored programs if they are approved by the Federal awarding agency.

Comment: Given that the Bayh-Dole Act encouraged technology transfer, selling or marketing costs of goods or services should be allowable costs. At the minimum, these costs should be allowable as direct costs to the Federal projects.

Response: The Circular is revised to allow selling or marketing costs as direct costs to some Federal sponsored programs when approved by the Federal awarding agency.

Severance

Pay

Comment: Early retirement benefits should be allowable costs.

Response: Early retirement benefit costs are allowable costs, subject to limitations, and are discussed in subparagraph 6.f, Fringe Benefits, along with other forms of fringe benefits. Paragraph 49, Severance Pay, deals only with severance policy, i.e., dismissal, and the reimbursement of its costs.

Comment: Guidelines for costs of severance pay to foreign nationals in excess of customary or prevailing practices should be consistent with section 2151 of the Federal Acquisition Streamlining Act of 1994 (FASA).

Response: OMB agrees. The Circular is revised to be consistent with FASA guidelines for severance pay to foreign nationals in excess of customary or prevailing practices. As a result, the Federal awarding agency may allow these costs when they are necessary for the performance of the Federal sponsored programs.

Trustees'

Travel

Comment: Several commenters opposed the proposal to disallow trustees' travel costs citing the difficulty of retaining or obtaining members to serve voluntarily on the Board of Trustees (or Directors) of a non-profit organization, if Board members have to pay for their own travel expenses to attend Board meetings. The commenters added that since serving on a non-profit organization's Board is often not as prestigious and desirable as serving on a University's Board (where trustees' travel costs are unallowable under Circular A-21), non-reimbursement of the travel costs would inhibit the recruitment of Board members.

Response: OMB concurs that disallowing the reimbursement of trustees' travel costs could inhibit the recruitment of qualified Board members (particularly at smaller non-profit organizations), thereby hampering the operations of a non-profit organization. OMB also recognizes that trustees' travel costs are reasonable and necessary business costs. As a result, trustees' travel costs remain allowable.

Comment: Trustees' travel costs should be allowable if they are reasonable. Some suggested tests for reasonableness of trustees' travel costs are: limit number of allowed trips per year, restriction of trips to organization's principal place of business or reasonable surroundings, distinction between scheduled Board meetings and emergency Board meetings, and disallowance of first-class airfare travels.

Response: All costs charged to Federal projects must satisfy a reasonableness test. Although some of the suggested reasonableness tests appear to be good, OMB does not believe it is necessary at this time to impose specific restrictions on trustees' travel expenses. The reasonableness of a particular travel expense remains at the judgement of Federal negotiators.

Comment: At Head Start organizations, some Trustee members are first sent for training in the operations of a Head Start program. These travel costs related to

training should be allowable.

Response: Travel costs related to training and education are allowable, subject to limitations, and are addressed in paragraph 53 of the Circular, Training and education costs.

Comment: At Head Start organizations, there often are several advisory boards in addition to the Board of Trustees (or Directors). These advisory boards are involved in day-to-day operations of the organizations and often incur travel costs. Are these costs subject to the same restrictions as trustees' travel?

Response: Travel costs for members of advisory groups are allowable, subject to the limitations in paragraph 55, Travel costs.

Multiple	Allocation	Basis	(MAB)
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Comment: The multiple allocation method for calculating indirect costs rates is much more complicated and burdensome than the simplified method and it will cost non-profit organizations much more to prepare the indirect cost proposal. Several commenters recommended the flexibility of using one of the three different allocation methods as they are currently described in the Circular. The multiple allocation basis (MAB) should remain an optional allocation methodology rather than a required methodology for certain organizations.

Response: The use of MAB for major non-profit organizations promotes consistency in the calculation and the reporting of indirect costs. It would facilitate the accumulation of indirect cost data by cost components (i.e., facilities and administration) and provide comparable rates between major research non-profit organizations and universities. However, OMB recognizes that a conversion to MAB may require some substantial changes in the organization's accounting system and that MAB is not practical for single-function organizations. Therefore, the Circular continues to allow non-profit organizations to use any of the current three allocation methodologies.

Comment: Several commenters suggested raising the threshold for the requirement to \$25 million in direct Federal funding. Several commenters also suggested an exemption from this requirement for single-function organizations regardless of Federal funding levels.

Response: The Circular is revised to allow the use of the current three allocation methodologies for all non-profit organizations. For organizations that receive more than \$10 million in direct Federal funding, a breakout of indirect costs into two components, facilities and administration, is required regardless of the selected allocation methodology.

Comment: The allocation methodology for general administration under MAB on the basis of modified total direct costs conflicts with the required methodology under Cost Accounting Standard (CAS) 410 applicable to contracts using the salaries and wages basis. One commenter suggested that a fully CAS-covered non-profit organization be

exempted from the MAB requirement

Response: MAB is not a requirement for non-profit organizations and remains one of the three available methodologies in the Circular for computing indirect costs. In addition, CAS-covered non-profit organizations should continue to follow CAS with respect to the measurement, assignment and allocation of costs.

Comment: The revision should clarify that the modified total direct cost base should only include the first \$25,000 of a subcontract regardless of the period during which the project is started (consistent with OMB Circular A-21).

Response: The modified total direct cost base, described in subparagraph D.3.f of the Circular, includes the first \$25,000 of each subgrant or subcontract regardless of the period covered by the subgrant or subcontract. Subgrant or subcontract costs above \$25,000 shall be excluded from the modified total direct cost base. For example, for a \$300,000 subgrant that lasts three years, only the first \$25,000 incurred on the award should be included in the modified total direct cost base.

Administrative Cap of 26 percent

Comment: Most commenters strongly opposed the 26 percent administrative cap stating that such limitation on cost reimbursement is arbitrary, capricious, and unnecessary. Some argued that a cap would be financially disastrous to non-profit organizations because they receive most of their funding from Federal sources (unlike universities). A detailed analysis is urged to determine the average administrative costs applicable to non-profit organizations, if an administrative cap is to be implemented at non-profit organizations.

Response: Based on the comments against the implementation of an administrative cap at non-profit organizations, OMB defers the consideration of establishing any administrative cap until better data on indirect costs at non-profit organizations can be collected. If OMB believes that an administrative cap should be implemented, it would be proposed in a subsequent notice.

Other

Comment: Attachment C of the Circular should be updated since a few listed organizations no longer exist.

Response: OMB agrees. Attachment C is updated to delete those organizations that no longer exist or are no longer exempted from OMB Circular A-122.

Franklin
Director

D.

Raines

Attachments A, B and C of Circular A-122 are revised as follows:

A. Attachment A

1. Add subparagraph 3 to paragraph C ("Indirect Costs").

3. Indirect costs shall be classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation and use allowances on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. "Administration" is defined as general administration and general expenses such as the director's office, accounting, personnel, library expenses and all other types of expenditures not listed specifically under one of the subcategories of "Facilities" (including cross allocations from other pools, where applicable). See indirect cost rate reporting requirements in subparagraphs D.2.e and D.3.g.

2. Add subparagraph 2.e to paragraph D.

e. For an organization that receives more than \$10 million in Federal funding of direct costs in a fiscal year, a breakout of the indirect cost component into two broad categories, Facilities and Administration as defined in subparagraph C.3, is required. The rate in each case shall be stated as the percentage which the amount of the particular indirect cost category (i.e., Facilities or Administration) is of the distribution base identified with that category.

3. Replace subparagraph D.3 with the following:

3. Multiple allocation base method.

a. General. Where an organization's indirect costs benefit its major functions in varying degrees, indirect costs shall be accumulated into separate cost groupings, as described in subparagraph b. Each grouping shall then be allocated individually to benefitting functions by means of a base which best measures the relative benefits. The default allocation bases by cost pool are described in subparagraph c.

b. Identification of indirect costs. Cost groupings shall be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping shall constitute a pool of expenses that are of like character in terms of functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The groupings are classified within the two broad categories: "Facilities" and "Administration," as described in subparagraph C.3. The indirect cost pools are defined as follows:

(1) Depreciation and use allowances. The expenses under this heading are the portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with paragraph 11 of Attachment B ("Depreciation and use allowances").

(2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with paragraph 23 of Attachment B ("Interest, fund raising, and investment management costs").

(3) Operation and maintenance expenses. The expenses under this heading are those that have been incurred for the administration, operation, maintenance, preservation,

and protection of the organization's physical plant. They include expenses normally incurred for such items as: janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and other insurance relating to property; space and capital leasing; facility planning and management; and, central receiving. The operation and maintenance expenses category shall also include its allocable share of fringe benefit costs, depreciation and use allowances, and interest costs.

(4) General administration and general expenses. The expenses under this heading are those that have been incurred for the overall general executive and administrative offices of the organization and other expenses of a general nature which do not relate solely to any major function of the organization. This category shall also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation and use allowances, and interest costs. Examples of this category include central offices, such as the director's office, the office of finance, business services, budget and planning, personnel, safety and risk management, general counsel, management information systems, and library costs.

In developing this cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. For example, salaries of technical staff, project supplies, project publication, telephone toll charges, computer costs, travel costs, and specialized services costs shall be treated as direct costs wherever identifiable to a particular program. The salaries and wages of administrative and pooled clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate where a major project or activity explicitly requires and budgets for administrative or clerical services and other individuals involved can be identified with the program or activity. Items such as office supplies, postage, local telephone costs, periodicals and memberships should normally be treated as indirect costs.

c. Allocation bases. Actual conditions shall be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitting functions. The essential consideration in selecting a method or a base is that it is the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither the cause nor the effect of the relationship is determinable. When an allocation can be made by assignment of a cost grouping directly to the function benefited, the allocation shall be made in that manner. When the expenses in a cost grouping are more general in nature, the allocation shall be made through the use of a selected base which produces results that are equitable to both the Federal Government and the organization. The distribution shall be made in accordance with the bases described herein unless it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to sponsored awards. The results of special cost studies (such as an engineering utility study) shall not be used to determine and allocate the indirect costs to sponsored awards.

(1) Depreciation and use allowances. Depreciation and use allowances expenses shall be allocated in the following manner:

(a) Depreciation or use allowances on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, shall be assigned to that function.

(b) Depreciation or use allowances on buildings used for more than one function, and on capital improvements and equipment used in such buildings, shall be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas, such as hallways, stairwells, and restrooms.

(c) Depreciation or use allowances on buildings, capital improvements and equipment related space (e.g., individual rooms, and laboratories) used jointly by more than one function (as determined by the users of the space) shall be treated as follows. The cost of each jointly used unit of space shall be allocated to the benefitting functions on the basis of:

(i) the employees and other users on a full-time equivalent (FTE) basis or salaries and wages of those individual functions benefitting from the use of that space; or

(ii) organization-wide employee FTEs or salaries and wages applicable to the benefitting functions of the organization.

(d) Depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, shall be allocated to user categories on a FTE basis and distributed to major functions in proportion to the salaries and wages of all employees applicable to the functions.

(2) Interest. Interest costs shall be allocated in the same manner as the depreciation or use allowances on the buildings, equipment and capital equipments to which the interest relates.

(3) Operation and maintenance expenses. Operation and maintenance expenses shall be allocated in the same manner as the depreciation and use allowances.

(4) General administration and general expenses. General administration and general expenses shall be allocated to benefitting functions based on modified total direct costs (MTDC), as described in subparagraph D.3.f. The expenses included in this category could be grouped first according to major functions of the organization to which they render services or provide benefits. The aggregate expenses of each group shall then be allocated to benefitting functions based on MTDC.

d. Order of distribution.

(1) Indirect cost categories consisting of depreciation and use allowances, interest, operation and maintenance, and general administration and general expenses shall be

allocated in that order to the remaining indirect cost categories as well as to the major functions of the organization. Other cost categories could be allocated in the order determined to be most appropriate by the organization. When cross allocation of costs is made as provided in subparagraph (2), this order of allocation does not apply.

(2) Normally, an indirect cost category will be considered closed once it has been allocated to other cost objectives, and costs shall not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect costs categories could be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories is required.

e. Application of indirect cost rate or rates. Except where a special indirect cost rate(s) is required in accordance with subparagraph D.5, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual awards included in that function by use of a single indirect cost rate.

f. Distribution basis. Indirect costs shall be distributed to applicable sponsored awards and other benefitting activities within each major function on the basis of MTDC. MTDC consists of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to the first \$25,000 of each subgrant or subcontract (regardless of the period covered by the subgrant or subcontract). Equipment, capital expenditures, charges for patient care, rental costs and the portion in excess of \$25,000 shall be excluded from MTDC. Participant support costs shall generally be excluded from MTDC. Other items may only be excluded when the Federal cost cognizant agency determines that an exclusion is necessary to avoid a serious inequity in the distribution of indirect costs.

g. Individual Rate Components. An indirect cost rate shall be determined for each separate indirect cost pool developed. The rate in each case shall be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool. Each indirect cost rate negotiation or determination agreement shall include development of the rate for each indirect cost pool as well as the overall indirect cost rate. The indirect cost pools shall be classified within two broad categories: "Facilities" and "Administration," as described in subparagraph C.3.

B. Attachment B

Revise the following cost items in Attachment B to Circular A-122 ("Selected Items of Cost").

1. Revise the Table of Contents for Attachment B to read:
 1. Advertising and public relations costs
 2. Alcoholic beverages
 3. Bad debts
 4. Bid and proposal costs (reserved)

5.			Bonding			costs
6.			Communication			costs
7.	Compensation		for	personal		services
8.			Contingency			provisions
9.						Contributions
10.	Defense and prosecution of criminal and civil proceedings, claims, appeals and patent					infringement
11.	Depreciation		and	use		allowances
12.						Donations
13.	Employee morale, health, and welfare costs and credits					
14.			Entertainment			costs
15.	Equipment		and other	capital		expenditures
16.		Fines		and		penalties
17.			Fringe			benefits
18.	Goods	or	services	for	personal	use
19.	Housing		and	personal	living	expenses
20.	Idle	facilities		and	idle	capacity
21.	Independent	research		and	development	(reserved)
22.		Insurance		and		indemnification
23.	Interest, fund raising, and investment management costs					
24.		Labor		relations		costs
25.			Lobbying			costs
26.	Losses		on		other	awards
27.	Maintenance		and		repair	costs
28.		Materials		and		supplies
29.		Meetings		and		conferences
30.	Memberships, subscriptions, and professional activity costs					
31.		Organization				costs
32.	Overtime, extra-pay shift, and multi-shift premiums					
33.	Page charges in professional journals					
34.	Participant			support		costs
35.		Patent				costs
36.		Pension				plans
37.	Plant			security		costs
38.		Pre-award				costs
39.	Professional			service		costs
40.	Profits and losses on disposition of depreciable property or other capital assets					
41.	Publication		and	printing		costs
42.	Rearrangement		and	alteration		costs
43.		Reconversion				costs
44.		Recruiting				costs
45.		Relocation				costs
46.		Rental				costs
47.	Royalties and other costs for use of patents and copyrights					
48.		Selling		and		marketing
49.		Severance				pay
50.	Specialized			service		facilities
51.						Taxes

52.		Termination	costs
53.	Training	and	education costs
54.		Transportation	costs
55.		Travel	costs
56.			Trustees

2. Revise and retitle paragraph 1 to read:

1. Advertising and public relations costs.

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the organization or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required for the performance by the organization of obligations arising under a sponsored award, when considered in conjunction with all other recruitment costs, as set forth in paragraph 44 ("Recruiting costs");

(2) The procurement of goods and services for the performance of a sponsored award;

(3) The disposal of scrap or surplus materials acquired in the performance of a sponsored award except when organizations are reimbursed for disposal costs at a predetermined amount in accordance with OMB Circular A-110, Sec.____.34, "Equipment"; or

(4) Other specific purposes necessary to meet the requirements of the sponsored award.

d. The only allowable public relations costs are:

(1) Costs specifically required by sponsored awards;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of sponsored awards (these costs are considered necessary as part of the outreach effort for the sponsored awards); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of contract/grant awards, financial matters, etc.

e. Costs identified in subparagraphs c and d if incurred for more than one sponsored award or for both sponsored work and other work of the organization, are allowable to the extent that the principles in paragraphs B ("Direct Costs") and C ("Indirect Costs") of Attachment A are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in subparagraphs c, d, and e;

(2) Costs of meetings or other events related to fund raising or other organizational activities including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees or cost of services engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the organization.

3. Renumber current paragraphs 2 through 8 as paragraphs 3 through 9, respectively.

4. Add the following new paragraph 2:

2. Alcoholic beverages. Costs of alcoholic beverages are unallowable.

5. In paragraph 7 ("Compensation for personal services"), as renumbered above in item 3, rename the current subparagraph g ("Pension costs"), as subparagraph h. Add a new subparagraph g:

g. Organization-furnished automobiles. That portion of the cost of organization-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect costs regardless of whether the cost is reported as taxable income to the employees. These costs are allowable as direct costs to sponsored award when necessary for the performance of the sponsored award and approved by awarding agencies.

6. Renumber current paragraphs 9 through 15 as paragraphs 11 through 17, respectively.

7. Add new paragraph 10:

10. Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement.

a.

Definitions.

(1) Conviction, as used herein, means a judgment or a conviction of a criminal offense by any court of competent jurisdiction, whether entered upon as a verdict or a plea, including a conviction due to a plea of *nolo contendere*.

(2) Costs include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; and the costs of the services of accountants, consultants, or others retained by the organization to assist it; costs of employees, officers and trustees, and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding that bears a direct relationship to the proceedings.

(3) Fraud, as used herein, means (i) acts of fraud corruption or attempts to defraud the Federal Government or to corrupt its agents, (ii) acts that constitute a cause for debarment or suspension (as specified in agency regulations), and (iii) acts which violate the False Claims Act, 31 U.S.C., sections 3729-3731, or the Anti-Kickback Act, 41 U.S.C., sections 51 and 54.

(4) Penalty does not include restitution, reimbursement, or compensatory damages.

(5) Proceeding includes an investigation.

b. (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, or a State, local or foreign government, are not allowable if the proceeding: (1) relates to a violation of, or failure to comply with, a Federal, State, local or foreign statute or regulation by the organization (including its agents and employees), and (2) results in any of the following dispositions:

(a) In a criminal proceeding, a conviction.

(b) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of organizational liability.

(c) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.

(d) A final decision by an appropriate Federal official to debar or suspend the organization, to rescind or void an award, or to terminate an award for default by reason of a violation or failure to comply with a law or regulation.

(e) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in (a), (b), (c) or (d).

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings shall be unallowable if any one of them results in one of the

dispositions shown in subparagraph b.(1).

c. If a proceeding referred to in subparagraph b is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the organization and the Federal Government, then the costs incurred by the organization in connection with such proceedings that are otherwise not allowable under subparagraph b may be allowed to the extent specifically provided in such agreement.

d. If a proceeding referred to in subparagraph b is commenced by a State, local or foreign government, the authorized Federal official may allow the costs incurred by the organization for such proceedings, if such authorized official determines that the costs were incurred as a result of (1) a specific term or condition of a federally-sponsored award, or (2) specific written direction of an authorized official of the sponsoring agency.

e. Costs incurred in connection with proceedings described in subparagraph b, but which are not made unallowable by that subparagraph, may be allowed by the Federal Government, but only to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the costs incurred, as allowable and allocable costs, is not prohibited by any other provision(s) of the sponsored award;

(3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) The percentage of costs allowed does not exceed the percentage determined by an authorized Federal official to be appropriate, considering the complexity of the litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. However, if an agreement reached under subparagraph c has explicitly considered this 80 percent limitation and permitted a higher percentage, then the full amount of costs resulting from that agreement shall be allowable.

f. Costs incurred by the organization in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (Pub. L. 100-700), including the cost of all relief necessary to make such employee whole, where the organization was found liable or settled, are unallowable.

g. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with defense against Federal Government claims or appeals, antitrust suits, or the prosecution of claims or appeals against the Federal Government, are unallowable.

h. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the sponsored awards.

i. Costs which may be unallowable under this paragraph, including directly associated costs, shall be segregated and accounted for by the organization separately. During the pendency of any proceeding covered by subparagraphs b and f, the Federal Government shall generally withhold payment of such costs. However, if in the best interests of the Federal Government, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the organization to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

8. In paragraph 15 ("Equipment and other capital expenditures"), as renumbered in item 6 above, replace subparagraphs 15.a.(1) and 15.b.(2) to read:

15.a.(1) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) \$5000. The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years as negotiated with the Federal cognizant agency.

15.b.(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$5000 or more have the prior approval of awarding agency.

9. Renumber current paragraphs 16 through 36 as paragraphs 20 through 40, respectively.

10. Add new paragraph 18:

18. **Goods or services for personal use.** Costs of goods or services for personal use of the organization's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

11. Add new paragraph 19:

19. **Housing and personal living expenses.**

a. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent, etc.), housing allowances and personal living expenses for/of the organization's officers are unallowable as fringe benefit or indirect costs regardless of whether the cost is reported as taxable income to the employees. These costs are allowable as direct costs to sponsored awards when necessary for the performance of the sponsored award and approved by awarding agencies.

b. The term "officers" includes current and past officers and employees.

12. Add to paragraph 22.a.(2) ("Insurance and indemnification"), as renumbered in item 9, subparagraphs (f) and (g):

(f) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the organization's materials or workmanship are unallowable.

(g) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of Federal research programs only to the extent that the Federal research programs involve human subjects or training of participants in research techniques. Medical liability insurance costs shall be treated as a direct cost and shall be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

13. Revise paragraph 30, as renumbered in item 9, to read:

30. **Memberships, subscriptions and professional activity costs.**

a. Costs of the organization's membership in business, technical, and professional organizations are allowable.

b. Costs of the organization's subscriptions to business, professional, and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

d. Costs of membership in any civic or community organization are allowable with prior approval by Federal cognizant agency.

e. Costs of membership in any country club or social or dining club or organization are unallowable.

14. Delete subparagraph 39.d, as renumbered in item 9.

15. Delete current paragraph 37 ("Public service costs").

16. Renumber current paragraphs 38 through 44 as paragraphs 41 through 47, respectively.

17. Revise paragraph 44, as renumbered in item 16, to read:

44. **Recruiting costs.**

a. Subject to subparagraphs b, c, and d, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred

incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well-managed recruitment program. Where the organization uses employment agencies, costs that are not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal organizational practices in this respect), are unallowable.

c. Costs of help wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other organizations that do not meet the test of reasonableness or do not conform with the established practices of the organization, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after being hired, the organization will be required to refund or credit such relocation costs to the Federal Government.

18. Renumber current paragraphs 45 through 51 as paragraphs 49 through 55, respectively.

19. Add new paragraph 48:

48. **Selling and marketing.** Costs of selling and marketing any products or services of the organization (unless allowed under paragraph 1 as allowable public relations costs) are unallowable. These costs, however, are allowable as direct costs, with prior approval by awarding agencies, when they are necessary for the performance of Federal programs.

20. Add new subparagraphs c, d and e to paragraph 49 ("Severance pay"), as renumbered in item 18, as follows:

c. Costs incurred in certain severance pay packages (commonly known as "a golden parachute" payment) which are in an amount in excess of the normal severance pay paid by the organization to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the organization's assets are unallowable.

d. Severance payments to foreign nationals employed by the organization outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the organization in the United States are unallowable, unless they are necessary for the performance of Federal programs and approved by awarding agencies.

e. Severance payments to foreign nationals employed by the organization outside the

United States due to the termination of the foreign national as a result of the closing of
or curtailment of activities by, the organization in that country, are unallowable, unless
they are necessary for the performance of Federal programs and approved by
awarding agencies.

21. Add new paragraph 56:

56. **Trustees.** Travel and subsistence costs of trustees (or directors) are allowable. The costs are subject to restrictions regarding lodging, subsistence and air travel costs provided in paragraph 55.

C. Attachment C

1. Delete the following organizations from Attachment C. These organizations either no longer exist or are no longer exempted from complying with Circular A-122.

- Associated Universities, Incorporated, Washington, D.C.
- Associated Universities for Research and Astronomy, Tucson, Arizona
- Center for Energy and Environmental Research (CEER), (University of Puerto Rico), Commonwealth of Puerto Rico
- Comparative Animal Research Laboratory (CARL), (University of Tennessee), Oak Ridge, Tennessee
- Institute of Gas Technology, Chicago, Illinois
- Montana Energy Research and Development Institute, Inc., (MERDI), Butte, Montana
- Project Management Corporation, Oak Ridge, Tennessee
- Sandia Corporation, Albuquerque, New Mexico
- Universities Corporation for Atmospheric Research, Boulder, Colorado

2. Change Argonne Universities Association, Chicago, Illinois to Argonne National Laboratory, Chicago, Illinois.

3. Change the location of the Institute for Defense Analysis in Virginia from Arlington to Alexandria.

4. Replace Midwest Research Institute, Headquartered in Kansas City, Missouri to National Renewable Energy Laboratory, Golden, Colorado.

D. A recompilation of the entire Circular A-122, with all its amendments, follows:

CIRCULAR NO. A-122
Revised
TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS
SUBJECT: Cost Principles for Non-Profit Organizations

1. **Purpose.** This Circular establishes principles for determining costs of grants,

contracts and other agreements with non-profit organizations. It does not apply to colleges and universities which are covered by Office of Management and Budget (OMB) Circular A-21, "Cost Principles for Educational Institutions"; State, local, and federally-recognized Indian tribal governments which are covered by OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments"; or hospitals. The principles are designed to provide that the Federal Government bear its fair share of costs except where restricted or prohibited by law. The principles do not attempt to prescribe the extent of cost sharing or matching on grants, contracts, or other agreements. However, such cost sharing or matching shall not be accomplished through arbitrary limitations on individual cost elements by Federal agencies. Provision for profit or other increment above cost is outside the scope of this Circular.

2. **Supersession.** This Circular supersedes cost principles issued by individual agencies for non-profit organizations.

3. **Applicability.**

a. These principles shall be used by all Federal agencies in determining the costs of work performed by non-profit organizations under grants, cooperative agreements, cost reimbursement contracts, and other contracts in which costs are used in pricing, administration, or settlement. All of these instruments are hereafter referred to as awards. The principles do not apply to awards under which an organization is not required to account to the Federal Government for actual costs incurred.

b. All cost reimbursement subawards (subgrants, subcontracts, etc.) are subject to those Federal cost principles applicable to the particular organization concerned. Thus, if a subaward is to a non-profit organization, this Circular shall apply; if a subaward is to a commercial organization, the cost principles applicable to commercial concerns shall apply; if a subaward is to a college or university, Circular A-21 shall apply; if a subaward is to a State, local, or federally-recognized Indian tribal government, Circular A-87 shall apply.

4. **Definitions.**

a. **Non-profit organization** means any corporation, trust, association, cooperative, or other organization which:

(1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(2) is not organized primarily for profit; and

(3) uses its net proceeds to maintain, improve, and/or expand its operations. For this purpose, the term "non-profit organization" excludes (i) colleges and universities; (ii) hospitals; (iii) State, local, and federally-recognized Indian tribal governments; and (iv) those non-profit organizations which are excluded from coverage of this Circular in accordance with paragraph 5.

b. **Prior approval** means securing the awarding agency's permission in advance to incur cost for those items that are designated as requiring prior approval by the Circular. Generally this permission will be in writing. Where an item of cost requiring prior approval is specified in the budget of an award, approval of the budget constitutes approval of that cost.

5. **Exclusion of some non-profit organizations.** Some non-profit organizations, because of their size and nature of operations, can be considered to be similar to commercial concerns for purpose of applicability of cost principles. Such non-profit organizations shall operate under Federal cost principles applicable to commercial concerns. A listing of these organizations is contained in Attachment C. Other organizations may be added from time to time.

6. **Responsibilities.** Agencies responsible for administering programs that involve awards to non-profit organizations shall implement the provisions of this Circular. Upon request, implementing instruction shall be furnished to OMB. Agencies shall designate a liaison official to serve as the agency representative on matters relating to the implementation of this Circular. The name and title of such representative shall be furnished to OMB within 30 days of the date of this Circular.

7. **Attachments.** The principles and related policy guides are set forth in the following Attachments:

- Attachment A - General Principles
- Attachment B - Selected Items of Cost
- Attachment C - Non-Profit Organizations Not Subject To This Circular

8. **Requests for exceptions.** OMB may grant exceptions to the requirements of this Circular when permissible under existing law. However, in the interest of achieving maximum uniformity, exceptions will be permitted only in highly unusual circumstances.

9. **Effective Date.** The provisions of this Circular are effective immediately. Implementation shall be phased in by incorporating the provisions into new awards made after the start of the organization's next fiscal year. For existing awards, the new principles may be applied if an organization and the cognizant Federal agency agree. Earlier implementation, or a delay in implementation of individual provisions, is also permitted by mutual agreement between an organization and the cognizant Federal agency.

10. **Inquiries.** Further information concerning this Circular may be obtained by contacting the Office of Federal Financial Management, OMB, Washington, DC 20503, telephone (202) 395-3993.

Attachments

ATTACHMENT		A
Circular	No.	A-122

GENERAL PRINCIPLES
Table of Contents

A.	Basic	Considerations
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1.	Composition	of	total	costs
2.	Factors	affecting	allowability	of costs
3.		Reasonable		costs
4.		Allocable		costs
5.		Applicable		credits
6.		Advance		understandings
7.		Conditional		exemptions

B. Direct Costs

C. Indirect Costs

D. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1.					General
2.	Simplified		allocation		method
3.	Multiple	allocation	base		method
4.	Direct	allocation			method
5.	Special	indirect	cost		rates

E. Negotiation and Approval of Indirect Cost Rates

1. Definitions
2. Negotiation and approval of rates

ATTACHMENT A
Circular No. A-122

GENERAL PRINCIPLES

A. **Basic Considerations**

1. **Composition of total costs.** The total cost of an award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

2. **Factors affecting allowability of costs.** To be allowable under an award, costs must meet the following general criteria:

- a. Be reasonable for the performance of the award and be allocable thereto under these principles.
- b. Conform to any limitations or exclusions set forth in these principles or in the award as to types or amount of cost items.
- c. Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the organization.
- d. Be accorded consistent treatment.
- e. Be determined in accordance with generally accepted accounting principles (GAAP).

- f. Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period.
- g. Be adequately documented.

3. **Reasonable costs.** A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the costs. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with organizations or separate divisions thereof which receive the preponderance of their support from awards made by Federal agencies. In determining the reasonableness of a given cost, consideration shall be given to:

- a. Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the organization or the performance of the award.
- b. The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and terms and conditions of the award.
- c. Whether the individuals concerned acted with prudence in the circumstances, considering their responsibilities to the organization, its members, employees, and clients, the public at large, and the Federal Government.
- d. Significant deviations from the established practices of the organization which may unjustifiably increase the award costs.

4. **Allocable costs.**

a. A cost is allocable to a particular cost objective, such as a grant, contract, project, service, or other activity, in accordance with the relative benefits received. A cost is allocable to a Federal award if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it:

- (1) Is incurred specifically for the award.
- (2) Benefits both the award and other work and can be distributed in reasonable proportion to the benefits received, or
- (3) Is necessary to the overall operation of the organization, although a direct relationship to any particular cost objective cannot be shown.

b. Any cost allocable to a particular award or other cost objective under these principles may not be shifted to other Federal awards to overcome funding deficiencies, or to avoid restrictions imposed by law or by the terms of the award.

5. **Applicable credits.**

a. The term applicable credits refers to those receipts, or reduction of expenditures which operate to offset or reduce expense items that are allocable to awards as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing or received by the organization relate to allowable cost, they shall be credited to the Federal Government either as a cost reduction or cash refund, as appropriate.

b. In some instances, the amounts received from the Federal Government to finance

organizational activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the organization in determining the rates or amounts to be charged to Federal awards for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds.

c. For rules covering program income (i.e., gross income earned from federally-supported activities) see Sec. __.24 of Office of Management and Budget (OMB) Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations."

6. **Advance understandings.** Under any given award, the reasonableness and allocability of certain items of costs may be difficult to determine. This is particularly true in connection with organizations that receive a preponderance of their support from Federal agencies. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, it is often desirable to seek a written agreement with the cognizant or awarding agency in advance of the incurrence of special or unusual costs. The absence of an advance agreement on any element of cost will not, in itself, affect the reasonableness or allocability of that element.

7. **Conditional exemptions.**

a. OMB authorizes conditional exemption from OMB administrative requirements and cost principles circulars for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

b. To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of OMB Circulars A-87 (Attachment A, subsection C.3), "Cost Principles for State, Local, and Indian Tribal Governments," A-21 (Section C, subpart 4), "Cost Principles for Educational Institutions," and A-122 (Attachment A, subsection A.4), "Cost Principles for Non-Profit Organizations," and from all of the administrative requirements provisions of OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," and the agencies' grants management common rule.

c. When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the

provisions of OMB Circular A-87, and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

B. Direct Costs

1. Direct costs are those that can be identified specifically with a particular final cost objective, i.e., a particular award, project, service, or other direct activity of an organization. However, a cost may not be assigned to an award as a direct cost if any other cost incurred for the same purpose, in like circumstance, has been allocated to an award as an indirect cost. Costs identified specifically with awards are direct costs of the awards and are to be assigned directly thereto. Costs identified specifically with other final cost objectives of the organization are direct costs of those cost objectives and are not to be assigned to other awards directly or indirectly.

2. Any direct cost of a minor amount may be treated as an indirect cost for reasons of practicality where the accounting treatment for such cost is consistently applied to all final cost objectives.

3. The cost of certain activities are not allowable as charges to Federal awards (see, for example, fundraising costs in **paragraph 23 of Attachment B**). However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect cost rates and be allocated their share of the organization's indirect costs if they represent activities which (1) include the salaries of personnel, (2) occupy space, and (3) benefit from the organization's indirect costs.

4. The costs of activities performed primarily as a service to members, clients, or the general public when significant and necessary to the organization's mission must be treated as direct costs whether or not allowable and be allocated an equitable share of indirect costs. Some examples of these types of activities include:

- a. Maintenance of membership rolls, subscriptions, publications, and related functions.
- b. Providing services and information to members, legislative or administrative bodies, or the public.
- c. Promotion, lobbying, and other forms of public relations.
- d. Meetings and conferences except those held to conduct the general administration of the organization.
- e. Maintenance, protection, and investment of special funds not used in operation of the organization.
- f. Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, financial aid, etc.

C. Indirect Costs

1. Indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. Direct cost of minor amounts may be treated as indirect costs under the conditions described in **subparagraph B.2**. After direct costs have been determined and assigned directly to awards or other work as appropriate, indirect costs are those remaining to be allocated to benefiting cost objectives. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been assigned to an award as a direct cost.

2. Because of the diverse characteristics and accounting practices of non-profit organizations, it is not possible to specify the types of cost which may be classified as indirect cost in all situations. However, typical examples of indirect cost for many non-profit organizations may include depreciation or use allowances on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

3. Indirect costs shall be classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation and use allowances on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. "Administration" is defined as general administration and general expenses such as the director's office, accounting, personnel, library expenses and all other types of expenditures not listed specifically under one of the subcategories of "Facilities" (including cross allocations from other pools, where applicable). See indirect cost rate reporting requirements in **subparagraphs D.2.e and D.3.g**.

D. Allocation of Indirect Costs and Determination of Indirect Cost Rates

1. General.

a. Where a non-profit organization has only one major function, or where all its major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs and the computation of an indirect cost rate may be accomplished through simplified allocation procedures, as described in **subparagraph 2**.

b. Where an organization has several major functions which benefit from its indirect costs in varying degrees, allocation of indirect costs may require the accumulation of such costs into separate cost groupings which then are allocated individually to benefiting functions by means of a base which best measures the relative degree of benefit. The indirect costs allocated to each function are then distributed to individual awards and other activities included in that function by means of an indirect cost rate(s).

c. The determination of what constitutes an organization's major functions will depend on its purpose in being; the types of services it renders to the public, its clients, and its members; and the amount of effort it devotes to such activities as fundraising, public information and membership activities.

d. Specific methods for allocating indirect costs and computing indirect cost rates along with the conditions under which each method should be used are described in **subparagraphs 2 through 5.**

e. The base period for the allocation of indirect costs is the period in which such costs are incurred and accumulated for allocation to work performed in that period. The base period normally should coincide with the organization's fiscal year but, in any event, shall be so selected as to avoid inequities in the allocation of the costs.

2. Simplified allocation method.

a. Where an organization's major functions benefit from its indirect costs to approximately the same degree, the allocation of indirect costs may be accomplished by (i) separating the organization's total costs for the base period as either direct or indirect, and (ii) dividing the total allowable indirect costs (net of applicable credits) by an equitable distribution base. The result of this process is an indirect cost rate which is used to distribute indirect costs to individual awards. The rate should be expressed as the percentage which the total amount of allowable indirect costs bears to the base selected. This method should also be used where an organization has only one major function encompassing a number of individual projects or activities, and may be used where the level of Federal awards to an organization is relatively small.

b. Both the direct costs and the indirect costs shall exclude capital expenditures and unallowable costs. However, unallowable costs which represent activities must be included in the direct costs under the conditions described in **subparagraph B.3.**

c. The distribution base may be total direct costs (excluding capital expenditures and other distorting items, such as major subcontracts or subgrants), direct salaries and wages, or other base which results in an equitable distribution. The distribution base shall generally exclude participant support costs as defined in **paragraph 34 of Attachment B.**

d. Except where a special rate(s) is required in accordance with **subparagraph 5**, the indirect cost rate developed under the above principles is applicable to all awards at the organization. If a special rate(s) is required, appropriate modifications shall be made in order to develop the special rate(s).

e. For an organization that receives more than \$10 million in Federal funding of direct costs in a fiscal year, a breakout of the indirect cost component into two broad categories, Facilities and Administration as defined in **subparagraph C.3**, is required. The rate in each case shall be stated as the percentage which the amount of the particular indirect cost category (i.e., Facilities or Administration) is of the distribution base identified with that category.

3. Multiple allocation base method

a. General. Where an organization's indirect costs benefit its major functions in varying degrees, indirect costs shall be accumulated into separate cost groupings, as described in **subparagraph b.** Each grouping shall then be allocated individually to benefitting functions by means of a base which best measures the relative benefits. The default allocation bases by cost pool are described in **subparagraph c.**

b. Identification of indirect costs. Cost groupings shall be established so as to permit the allocation of each grouping on the basis of benefits provided to the major functions. Each grouping shall constitute a pool of expenses that are of like character in terms of functions they benefit and in terms of the allocation base which best measures the relative benefits provided to each function. The groupings are classified within the two broad categories: "Facilities" and "Administration," as described in **subparagraph C.3**. The indirect cost pools are defined as follows:

(1) Depreciation and use allowances. The expenses under this heading are the portion of the costs of the organization's buildings, capital improvements to land and buildings, and equipment which are computed in accordance with **paragraph 11 of Attachment B** ("Depreciation and use allowances").

(2) Interest. Interest on debt associated with certain buildings, equipment and capital improvements are computed in accordance with **paragraph 23 of Attachment B** ("Interest, fundraising, and investment management costs").

(3) Operation and maintenance expenses. The expenses under this heading are those that have been incurred for the administration, operation, maintenance, preservation, and protection of the organization's physical plant. They include expenses normally incurred for such items as: janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; care of grounds; maintenance and operation of buildings and other plant facilities; security; earthquake and disaster preparedness; environmental safety; hazardous waste disposal; property, liability and other insurance relating to property; space and capital leasing; facility planning and management; and, central receiving. The operation and maintenance expenses category shall also include its allocable share of fringe benefit costs, depreciation and use allowances, and interest costs.

(4) General administration and general expenses. The expenses under this heading are those that have been incurred for the overall general executive and administrative offices of the organization and other expenses of a general nature which do not relate solely to any major function of the organization. This category shall also include its allocable share of fringe benefit costs, operation and maintenance expense, depreciation and use allowances, and interest costs. Examples of this category include central offices, such as the director's office, the office of finance, business services, budget and planning, personnel, safety and risk management, general counsel, management information systems, and library costs.

In developing this cost pool, special care should be exercised to ensure that costs incurred for the same purpose in like circumstances are treated consistently as either direct or indirect costs. For example, salaries of technical staff, project supplies, project publication, telephone toll charges, computer costs, travel costs, and specialized services costs shall be treated as direct costs wherever identifiable to a particular program. The salaries and wages of administrative and pooled clerical staff should normally be treated as indirect costs. Direct charging of these costs may be appropriate where a major project or activity explicitly requires and budgets for

administrative or clerical services and other individuals involved can be identified with the program or activity. Items such as office supplies, postage, local telephone costs, periodicals and memberships should normally be treated as indirect costs.

c. Allocation bases. Actual conditions shall be taken into account in selecting the base to be used in allocating the expenses in each grouping to benefitting functions. The essential consideration in selecting a method or a base is that it is the one best suited for assigning the pool of costs to cost objectives in accordance with benefits derived; a traceable cause and effect relationship; or logic and reason, where neither the cause nor the effect of the relationship is determinable. When an allocation can be made by assignment of a cost grouping directly to the function benefited, the allocation shall be made in that manner. When the expenses in a cost grouping are more general in nature, the allocation shall be made through the use of a selected base which produces results that are equitable to both the Federal Government and the organization. The distribution shall be made in accordance with the bases described herein unless it can be demonstrated that the use of a different base would result in a more equitable allocation of the costs, or that a more readily available base would not increase the costs charged to sponsored awards. The results of special cost studies (such as an engineering utility study) shall not be used to determine and allocate the indirect costs to sponsored awards.

(1) Depreciation and use allowances. Depreciation and use allowances expenses shall be allocated in the following manner:

(a) Depreciation or use allowances on buildings used exclusively in the conduct of a single function, and on capital improvements and equipment used in such buildings, shall be assigned to that function.

(b) Depreciation or use allowances on buildings used for more than one function, and on capital improvements and equipment used in such buildings, shall be allocated to the individual functions performed in each building on the basis of usable square feet of space, excluding common areas, such as hallways, stairwells, and restrooms.

(c) Depreciation or use allowances on buildings, capital improvements and equipment related space (e.g., individual rooms, and laboratories) used jointly by more than one function (as determined by the users of the space) shall be treated as follows. The cost of each jointly used unit of space shall be allocated to the benefitting functions on the basis of:

(i) the employees and other users on a full-time equivalent (FTE) basis or salaries and wages of those individual functions benefitting from the use of that space; or

(ii) organization-wide employee FTEs or salaries and wages applicable to the benefitting functions of the organization.

(d) Depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings, shall be allocated to user categories on a FTE basis and distributed to major functions in proportion to the salaries and wages of all employees applicable to the

functions.

(2) Interest. Interest costs shall be allocated in the same manner as the depreciation or use allowances on the buildings, equipment and capital equipments to which the interest relates.

(3) Operation and maintenance expenses. Operation and maintenance expenses shall be allocated in the same manner as the depreciation and use allowances.

(4) General administration and general expenses. General administration and general expenses shall be allocated to benefitting functions based on modified total direct costs (MTDC), as described in **subparagraph D.3.f**. The expenses included in this category could be grouped first according to major functions of the organization to which they render services or provide benefits. The aggregate expenses of each group shall then be allocated to benefitting functions based on MTDC.

d. Order of distribution.

(1) Indirect cost categories consisting of depreciation and use allowances, interest, operation and maintenance, and general administration and general expenses shall be allocated in that order to the remaining indirect cost categories as well as to the major functions of the organization. Other cost categories could be allocated in the order determined to be most appropriate by the organization. When cross allocation of costs is made as provided in **subparagraph (2)**, this order of allocation does not apply.

(2) Normally, an indirect cost category will be considered closed once it has been allocated to other cost objectives, and costs shall not be subsequently allocated to it. However, a cross allocation of costs between two or more indirect costs categories could be used if such allocation will result in a more equitable allocation of costs. If a cross allocation is used, an appropriate modification to the composition of the indirect cost categories is required.

e. Application of indirect cost rate or rates. Except where a special indirect cost rate(s) is required in accordance with **subparagraph D.5**, the separate groupings of indirect costs allocated to each major function shall be aggregated and treated as a common pool for that function. The costs in the common pool shall then be distributed to individual awards included in that function by use of a single indirect cost rate.

f. Distribution basis. Indirect costs shall be distributed to applicable sponsored awards and other benefitting activities within each major function on the basis of MTDC. MTDC consists of all salaries and wages, fringe benefits, materials and supplies, services, travel, and subgrants and subcontracts up to the first \$25,000 of each subgrant or subcontract (regardless of the period covered by the subgrant or subcontract). Equipment, capital expenditures, charges for patient care, rental costs and the portion in excess of \$25,000 shall be excluded from MTDC. Participant support costs shall generally be excluded from MTDC. Other items may only be excluded when the Federal cost cognizant agency determines that an exclusion is necessary to avoid a serious inequity in the distribution of indirect costs.

g. Individual Rate Components. An indirect cost rate shall be determined for each separate indirect cost pool developed. The rate in each case shall be stated as the percentage which the amount of the particular indirect cost pool is of the distribution base identified with that pool. Each indirect cost rate negotiation or determination agreement shall include development of the rate for each indirect cost pool as well as the overall indirect cost rate. The indirect cost pools shall be classified within two broad categories: "Facilities" and "Administration," as described in **subparagraph C.3.**

4. Direct allocation method.

a. Some non-profit organizations treat all costs as direct costs except general administration and general expenses. These organizations generally separate their costs into three basic categories: (i) General administration and general expenses, (ii) fundraising, and (iii) other direct functions (including projects performed under Federal awards). Joint costs, such as depreciation, rental costs, operation and maintenance of facilities, telephone expenses, and the like are prorated individually as direct costs to each category and to each award or other activity using a base most appropriate to the particular cost being prorated.

b. This method is acceptable, provided each joint cost is prorated using a base which accurately measures the benefits provided to each award or other activity. The bases must be established in accordance with reasonable criteria, and be supported by current data. This method is compatible with the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations issued jointly by the National Health Council, Inc., the National Assembly of Voluntary Health and Social Welfare Organizations, and the United Way of America.

c. Under this method, indirect costs consist exclusively of general administration and general expenses. In all other respects, the organization's indirect cost rates shall be computed in the same manner as that described in **subparagraph 2.**

5. Special indirect cost rates. In some instances, a single indirect cost rate for all activities of an organization or for each major function of the organization may not be appropriate, since it would not take into account those different factors which may substantially affect the indirect costs applicable to a particular segment of work. For this purpose, a particular segment of work may be that performed under a single award or it may consist of work under a group of awards performed in a common environment. These factors may include the physical location of the work, the level of administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. When a particular segment of work is performed in an environment which appears to generate a significantly different level of indirect costs, provisions should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular allocation process, and the separate indirect cost rate resulting therefrom should be used, provided it is determined that (i) the rate differs significantly from that which would have been obtained under **subparagraphs 2, 3, and 4,** and (ii) the volume of work to which the rate would apply is material.

E. Negotiation and Approval of Indirect Cost Rates

1. **Definitions.** As used in this section, the following terms have the meanings set forth below:

- a. **Cognizant agency** means the Federal agency responsible for negotiating and approving indirect cost rates for a non-profit organization on behalf of all Federal agencies.
- b. **Predetermined rate** means an indirect cost rate, applicable to a specified current or future period, usually the organization's fiscal year. The rate is based on an estimate of the costs to be incurred during the period. A predetermined rate is not subject to adjustment.
- c. **Fixed rate** means an indirect cost rate which has the same characteristics as a predetermined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of a subsequent period.
- d. **Final rate** means an indirect cost rate applicable to a specified past period which is based on the actual costs of the period. A final rate is not subject to adjustment.
- e. **Provisional rate** or billing rate means a temporary indirect cost rate applicable to a specified period which is used for funding, interim reimbursement, and reporting indirect costs on awards pending the establishment of a final rate for the period.
- f. **Indirect cost proposal** means the documentation prepared by an organization to substantiate its claim for the reimbursement of indirect costs. This proposal provides the basis for the review and negotiation leading to the establishment of an organization's indirect cost rate.
- g. **Cost objective** means a function, organizational subdivision, contract, grant, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, projects, jobs and capitalized projects.

2. Negotiation and approval of rates.

- a. Unless different arrangements are agreed to by the agencies concerned, the Federal agency with the largest dollar value of awards with an organization will be designated as the cognizant agency for the negotiation and approval of the indirect cost rates and, where necessary, other rates such as fringe benefit and computer charge-out rates. Once an agency is assigned cognizance for a particular non-profit organization, the assignment will not be changed unless there is a major long-term shift in the dollar volume of the Federal awards to the organization. All concerned Federal agencies shall be given the opportunity to participate in the negotiation process but, after a rate has been agreed upon, it will be accepted by all Federal agencies. When a Federal agency has reason to believe that special operating factors affecting its awards necessitate special indirect cost rates in accordance with **subparagraph D.5**, it will, prior to the time the rates are negotiated, notify the cognizant agency.
- b. A non-profit organization which has not previously established an indirect cost rate with a Federal agency shall submit its initial indirect cost proposal immediately after the organization is advised that an award will be made and, in no event, later than three

months after the effective date of the award

c. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each fiscal year.

d. A predetermined rate may be negotiated for use on awards where there is reasonable assurance, based on past experience and reliable projection of the organization's costs, that the rate is not likely to exceed a rate based on the organization's actual costs.

e. Fixed rates may be negotiated where predetermined rates are not considered appropriate. A fixed rate, however, shall not be negotiated if (i) all or a substantial portion of the organization's awards are expected to expire before the carry-forward adjustment can be made; (ii) the mix of Federal and non-Federal work at the organization is too erratic to permit an equitable carry-forward adjustment; or (iii) the organization's operations fluctuate significantly from year to year.

f. Provisional and final rates shall be negotiated where neither predetermined nor fixed rates are appropriate.

g. The results of each negotiation shall be formalized in a written agreement between the cognizant agency and the non-profit organization. The cognizant agency shall distribute copies of the agreement to all concerned Federal agencies.

h. If a dispute arises in a negotiation of an indirect cost rate between the cognizant agency and the non-profit organization, the dispute shall be resolved in accordance with the appeals procedures of the cognizant agency.

i. To the extent that problems are encountered among the Federal agencies in connection with the negotiation and approval process, OMB will lend assistance as required to resolve such problems in a timely manner.

ATTACHMENT

Circular

No.

B

A-122

SELECTED ITEMS OF COST
Table of Contents

1.	Advertising	and	public	relations	costs
2.		Alcoholic			beverages
3.		Bad			debts
4.	Bid	and	proposal	costs	(reserved)
5.		Bonding			costs
6.		Communication			costs
7.	Compensation	for	personal		services
8.		Contingency			provisions
9.					Contributions
10.	Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement				
11.	Depreciation	and	use		allowances
12.					Donations
13.	Employee morale,	health,	and	welfare	costs and credits
14.		Entertainment			costs

15.	Equipment	and	other	capital	expenditures
16.		Fines		and	penalties
17.			Fringe		benefits
18.	Goods	or	services	for	personal use
19.	Housing	and	personal		living expenses
20.	Idle	facilities	and	idle	capacity
21.	Independent	research	and	development	(reserved)
22.		Insurance		and	indemnification
23.	Interest,	fund raising,	and	investment	management costs
24.		Labor		relations	costs
25.					Lobbying
26.		Losses	on	other	awards
27.		Maintenance	and	repair	costs
28.		Materials		and	supplies
29.		Meetings		and	conferences
30.	Memberships,	subscriptions,	and	professional	activity costs
31.			Organization		costs
32.	Overtime,	extra-pay	shift,	and	multi-shift premiums
33.	Page	charges	in	professional	journals
34.		Participant		support	costs
35.			Patent		costs
36.			Pension		plans
37.		Plant		security	costs
38.			Pre-award		costs
39.		Professional		service	costs
40.	Profits and losses on disposition of depreciable property or other capital assets				
41.		Publication	and	printing	costs
42.		Rearrangement	and	alteration	costs
43.			Reconversion		costs
44.			Recruiting		costs
45.			Relocation		costs
46.			Rental		costs
47.	Royalties	and other	costs for use	of patents	and copyrights
48.		Selling		and	marketing
49.			Severance		pay
50.		Specialized		service	facilities
51.					Taxes
52.			Termination		costs
53.	Training		and	education	costs
54.			Transportation		costs
55.			Travel		costs
56.	Trustees				

ATTACHMENT
Circular

No.

B
A-122

SELECTED ITEMS OF COST

Paragraphs 1 through 56 provide principles to be applied in establishing the allowability of certain items of cost. These principles apply whether a cost is treated as direct or indirect. Failure to mention a particular item of cost is not intended to imply that it is unallowable; rather, determination as to allowability in each case should be based on the treatment or principles provided for similar or related items of cost.

1. **Advertising and public relations costs.**

a. The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like.

b. The term public relations includes community relations and means those activities dedicated to maintaining the image of the organization or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

c. The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required for the performance by the organization of obligations arising under a sponsored award, when considered in conjunction with all other recruitment costs, as set forth in **paragraph 44** ("Recruiting costs");

(2) The procurement of goods and services for the performance of a sponsored award;

(3) The disposal of scrap or surplus materials acquired in the performance of a sponsored award except when organizations are reimbursed for disposal costs at a predetermined amount in accordance with OMB Circular A-110, Sec.____.34, "Equipment"; or

(4) Other specific purposes necessary to meet the requirements of the sponsored award.

d. The only allowable public relations costs are:

(1) Costs specifically required by sponsored awards;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of sponsored awards (these costs are considered necessary as part of the outreach effort for the sponsored awards); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of contract/grant awards, financial matters, etc.

e. Costs identified in **subparagraphs c and d** if incurred for more than one sponsored award or for both sponsored work and other work of the organization, are allowable to

the extent that the principles in **paragraphs B** ("Direct Costs") and **C** ("Indirect Costs") of **Attachment A** are observed.

f. Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in **subparagraphs c, d, and e**;

(2) Costs of meetings or other events related to fund raising or other organizational activities including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees or cost of services engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the organization.

2. **Alcoholic beverages.** Costs of alcoholic beverages are unallowable.

3. **Bad debts.** Bad debts, including losses (whether actual or estimated) arising from uncollectible accounts and other claims, related collection costs, and related legal costs, are unallowable.

4. **Bid and proposal costs.** (reserved)

5. **Bonding costs.**

a. Bonding costs arise when the Federal Government requires assurance against financial loss to itself or others by reason of the act or default of the organization. They arise also in instances where the organization requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the award are allowable.

c. Costs of bonding required by the organization in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

6. **Communication costs.** Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage and the like are allowable.

7. **Compensation for personal services.**

a. **Definition.** Compensation for personal services includes all compensation paid currently or accrued by the organization for services of employees rendered during the period of the award (except as otherwise provided in **subparagraph h**). It includes, but is not limited to, salaries, wages, director's and executive committee member's fees, incentive awards, fringe benefits, pension plan costs, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost of living differentials.

b. **Allowability.** Except as otherwise specifically provided in this paragraph, the costs of such compensation are allowable to the extent that:

(1) Total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the organization consistently applied to both Federal and non-Federal activities; and

(2) Charges to awards whether treated as direct or indirect costs are determined and supported as required in this paragraph.

c. **Reasonableness.**

(1) When the organization is predominantly engaged in activities other than those sponsored by the Federal Government, compensation for employees on federally-sponsored work will be considered reasonable to the extent that it is consistent with that paid for similar work in the organization's other activities.

(2) When the organization is predominantly engaged in federally-sponsored activities and in cases where the kind of employees required for the Federal activities are not found in the organization's other activities, compensation for employees on federally-sponsored work will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor markets in which the organization competes for the kind of employees involved.

d. **Special considerations in determining allowability.** Certain conditions require special consideration and possible limitations in determining costs under Federal awards where amounts or types of compensation appear unreasonable. Among such conditions are the following:

(1) Compensation to members of non-profit organizations, trustees, directors, associates, officers, or the immediate families thereof. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs.

(2) Any change in an organization's compensation policy resulting in a substantial increase in the organization's level of compensation, particularly when it was concurrent with an increase in the ratio of Federal awards to other activities of the organization or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

e. **Unallowable costs.** Costs which are unallowable under other paragraphs of this Attachment shall not be allowable under this paragraph solely on the basis that they constitute personal compensation.

f. **Fringe benefits.**

(1) Fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as vacation leave, sick leave, military leave, and the like, are allowable, provided such costs are absorbed by all organization activities in proportion to the relative amount of time or effort actually devoted to each.

(2) Fringe benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, pension plan costs (see **subparagraph h**), and the like, are allowable, provided such benefits are granted in accordance with established written organization policies. Such benefits whether treated as indirect costs or as direct costs, shall be distributed to particular awards and other activities in a manner consistent with the pattern of benefits accruing to the individuals or group of employees whose salaries and wages are chargeable to such awards and other activities.

(3) (a) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made shall not exceed the present value of the liability.

(b) Where an organization follows a consistent policy of expensing actual payments to, or on behalf of, employees or former employees for unemployment compensation or workers' compensation, such payments are allowable in the year of payment with the prior approval of the awarding agency, provided they are allocated to all activities of the organization.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent that the insurance represents additional compensation. The costs of such insurance when the organization is named as beneficiary are unallowable.

g. Organization-furnished automobiles. That portion of the cost of organization-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect costs regardless of whether the cost is reported as taxable income to the employees. These costs are allowable as direct costs to sponsored award when necessary for the performance of the sponsored award and approved by awarding agencies.

h. Pension plan costs.

(1) Costs of the organization's pension plan which are incurred in accordance with the established policies of the organization are allowable, provided:

(a) Such policies meet the test of reasonableness;

(b) The methods of cost allocation are not discriminatory;

(c) The cost assigned to each fiscal year is determined in accordance with generally accepted accounting principles (GAAP), as prescribed in Accounting Principles Board Opinion No. 8 issued by the American Institute of Certified Public Accountants; and

(d) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 days after each quarter of the year to which such costs are assignable are unallowable.

(2) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (Pub. L. 93-406) are allowable. Late payment charges on such premiums are unallowable.

(3) Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

i. **Incentive compensation.** Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the organization and the employees before the services were rendered, or pursuant to an established plan followed by the organization so consistently as to imply, in effect, an agreement to make such payment.

j. **Overtime, extra-pay shift, and multi-shift premiums.** See **paragraph 32.**

k. **Severance pay.** See **paragraph 49.**

l. **Training and education costs.** See **paragraph 53.**

m. **Support of salaries and wages.**

(1) Charges to awards for salaries and wages, whether treated as direct costs or indirect costs, will be based on documented payrolls approved by a responsible official(s) of the organization. The distribution of salaries and wages to awards must be supported by personnel activity reports, as prescribed in **subparagraph (2)**, except when a substitute system has been approved in writing by the cognizant agency. (See **subparagraph E.2 of Attachment A.**)

(2) Reports reflecting the distribution of activity of each employee must be maintained for all staff members (professionals and nonprofessionals) whose compensation is charged, in whole or in part, directly to awards. In addition, in order to support the allocation of indirect costs, such reports must also be maintained for other employees whose work involves two or more functions or activities if a distribution of their compensation between such functions or activities is needed in the determination of the organization's indirect cost rate(s) (e.g., an employee engaged part-time in indirect cost activities and part-time in a direct function). Reports maintained by non-profit organizations to satisfy these requirements must meet the following standards:

(a) The reports must reflect an *after-the-fact* determination of the actual activity of each employee. Budget estimates (i.e., estimates determined before the services are performed) do not qualify as support for charges to awards.

(b) Each report must account for the total activity for which employees are compensated and which is required in fulfillment of their obligations to the organization.

(c) The reports must be signed by the individual employee, or by a responsible supervisory official having first hand knowledge of the activities performed by the employee, that the distribution of activity represents a reasonable estimate of the actual work performed by the employee during the periods covered by the reports.

(d) The reports must be prepared at least monthly and must coincide with one or more pay periods.

(3) Charges for the salaries and wages of nonprofessional employees, in addition to the supporting documentation described in **subparagraphs (1) and (2)**, must also be supported by records indicating the total number of hours worked each day maintained in conformance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR Part 516). For this purpose, the term "nonprofessional employee" shall have the same meaning as "nonexempt employee," under FLSA.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on awards must be supported in the same manner as salaries and wages claimed for reimbursement from awarding agencies.

8. **Contingency provisions.** Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable. The term "contingency reserve" excludes self-insurance reserves (see **subparagraphs 7.f (3) and 22.a(2)(d)**); pension funds (see **subparagraph 7.h**); and reserves for normal severance pay (see **subparagraph 49.b(1)**).

9. **Contributions.** Contributions and donations by the organization to others are unallowable.

10. **Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringement.**

a. **Definitions.**

(1) Conviction, as used herein, means a judgment or a conviction of a criminal offense by any court of competent jurisdiction, whether entered upon as a verdict or a plea, including a conviction due to a plea of *nolo contendere*.

(2) Costs include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; and the costs of the services of accountants, consultants, or others retained by the organization to assist it; costs of employees, officers and trustees, and any similar costs incurred before, during, and after commencement of a judicial or administrative proceeding that bears a direct relationship to the proceedings.

(3) Fraud, as used herein, means (i) acts of fraud corruption or attempts to defraud the Federal Government or to corrupt its agents, (ii) acts that constitute a cause for debarment or suspension (as specified in agency regulations), and (iii) acts which violate the False Claims Act, 31 U.S.C., sections 3729-3731, or the Anti-Kickback Act, 41 U.S.C., sections 51 and 54.

(4) Penalty does not include restitution, reimbursement, or compensatory damages.

(5) Proceeding includes an investigation.

b. (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, or a State, local or foreign government, are not allowable if the proceeding: (1) relates to a violation of, or failure to comply with, a Federal, State, local or foreign statute or regulation by the organization (including its agents and employees), and (2) results in any of the following dispositions:

(a) In a criminal proceeding, a conviction.

(b) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of organizational liability.

(c) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.

(d) A final decision by an appropriate Federal official to debar or suspend the organization, to rescind or void an award, or to terminate an award for default by reason of a violation or failure to comply with a law or regulation.

(e) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in (a), (b), (c) or (d).

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings shall be unallowable if any one of them results in one of the dispositions shown in **subparagraph b.(1)**.

c. If a proceeding referred to in **subparagraph b** is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the organization and the Federal Government, then the costs incurred by the organization in connection with such proceedings that are otherwise not allowable under **subparagraph b** may be allowed to the extent specifically provided in such agreement.

d. If a proceeding referred to in **subparagraph b** is commenced by a State, local or foreign government, the authorized Federal official may allow the costs incurred by the organization for such proceedings, if such authorized official determines that the costs were incurred as a result of (1) a specific term or condition of a federally-sponsored award, or (2) specific written direction of an authorized official of the sponsoring agency.

e. Costs incurred in connection with proceedings described in **subparagraph b**, but which are not made unallowable by that subparagraph, may be allowed by the Federal Government, but only to the extent that:

(1) The costs are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the costs incurred, as allowable and allocable costs, is not prohibited by any other provision(s) of the sponsored award;

(3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) The percentage of costs allowed does not exceed the percentage determined by an authorized Federal official to be appropriate, considering the complexity of the litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. Such percentage shall not exceed 80 percent. However, if an agreement reached under **subparagraph c** has explicitly considered this 80 percent limitation and

permitted a higher percentage, then the full amount of costs resulting from that agreement shall be allowable.

f. Costs incurred by the organization in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (Pub. L. 100-700), including the cost of all relief necessary to make such employee whole, where the organization was found liable or settled, are unallowable.

g. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with defense against Federal Government claims or appeals, antitrust suits, or the prosecution of claims or appeals against the Federal Government, are unallowable.

h. Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the sponsored awards.

i. Costs which may be unallowable under this paragraph, including directly associated costs, shall be segregated and accounted for by the organization separately. During the pendency of any proceeding covered by **subparagraphs b and f**, the Federal Government shall generally withhold payment of such costs. However, if in the best interests of the Federal Government, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the organization to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

11. **Depreciation and use allowances.**

a. Compensation for the use of buildings, other capital improvements, and equipment on hand may be made through use allowances or depreciation. However, except as provided in **subparagraph f**, a combination of the two methods may not be used in connection with a single class of fixed assets (e.g., buildings, office equipment, computer equipment, etc.).

b. The computation of use allowances or depreciation shall be based on the acquisition cost of the assets involved. The acquisition cost of an asset donated to the organization by a third party shall be its fair market value at the time of the donation.

c. The computation of use allowances or depreciation will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government irrespective of where title was originally vested or where it presently resides; and

(3) Any portion of the cost of buildings and equipment contributed by or for the organization in satisfaction of a statutory matching requirement.

d. Where the use allowance method is followed, the use allowance for buildings and improvement (including land improvements, such as paved parking areas, fences, and sidewalks) will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost. When the use allowance

method is used for buildings, the entire building must be treated as a single asset; the building's components (e.g., plumbing system, heating and air conditioning, etc.) cannot be segregated from the building's shell. The two percent limitation, however, need not be applied to equipment which is merely attached or fastened to the building but not permanently fixed to it and which is used as furnishings or decorations or for specialized purposes (e.g., dentist chairs and dental treatment units, counters, laboratory benches bolted to the floor, dishwashers, carpeting, etc.). Such equipment will be considered as not being permanently fixed to the building if it can be removed without the need for costly or extensive alterations or repairs to the building or the equipment. Equipment that meets these criteria will be subject to the six and two-thirds percent equipment use allowance limitation.

e. Where depreciation method is followed, the period of useful service (useful life) established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular program area, and the renewal and replacement policies followed for the individual items or classes of assets involved. The method of depreciation used to assign the cost of an asset (or group of assets) to accounting periods shall reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater or lesser in the early portions of its useful life than in the later portions, the straight-line method shall be presumed to be the appropriate method. Depreciation methods once used shall not be changed unless approved in advance by the cognizant Federal agency. When the depreciation method is introduced for application to assets previously subject to a use allowance, the combination of use allowances and depreciation applicable to such assets must not exceed the total acquisition cost of the assets. When the depreciation method is used for buildings, a building's shell may be segregated from each building component (e.g., plumbing system, heating, and air conditioning system, etc.) and each item depreciated over its estimated useful life; or the entire building (i.e., the shell and all components) may be treated as a single asset and depreciated over a single useful life.

f. When the depreciation method is used for a particular class of assets, no depreciation may be allowed on any such assets that, under **subparagraph e**, would be viewed as fully depreciated. However, a reasonable use allowance may be negotiated for such assets if warranted after taking into consideration the amount of depreciation previously charged to the Federal Government, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the asset for the purpose contemplated.

g. Charges for use allowances or depreciation must be supported by adequate property records and physical inventories must be taken at least once every two years (a statistical sampling basis is acceptable) to ensure that assets exist and are usable and needed. When the depreciation method is followed, adequate depreciation records indicating the amount of depreciation taken each period must also be maintained.

12.

Donations.

a. Services received.

(1) Donated or volunteer services may be furnished to an organization by professional

and technical personnel, consultants, and other skilled and unskilled labor. The value of these services is not reimbursable either as a direct or indirect cost.

(2) The value of donated services utilized in the performance of a direct cost activity shall be considered in the determination of the organization's indirect cost rate(s) and, accordingly, shall be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(a) The aggregate value of the services is material;

(b) The services are supported by a significant amount of the indirect costs incurred by the organization;

(c) The direct cost activity is not pursued primarily for the benefit of the Federal Government,

(3) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient and the cognizant agency shall negotiate an appropriate allocation of indirect cost to the services.

(4) Where donated services directly benefit a project supported by an award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the award or used to meet cost sharing or matching requirements.

(5) The value of the donated services may be used to meet cost sharing or matching requirements under conditions described in Sec. __.23 of Circular A-110. Where donated services are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

(6) Fair market value of donated services shall be computed as follows:

(a) **Rates for volunteer services.** Rates for volunteers shall be consistent with those regular rates paid for similar work in other activities of the organization. In cases where the kinds of skills involved are not found in other activities of the organization, the rates used shall be consistent with those paid for similar work in the labor market in which the organization competes for such skills.

(b) **Services donated by other organizations.** When an employer donates the services of an employee, these services shall be valued at the employee's regular rate of pay (exclusive of fringe benefits and indirect costs), provided the services are in the same skill for which the employee is normally paid. If the services are not in the same skill for which the employee is normally paid, fair market value shall be computed in accordance with subparagraph (a).

b. Goods and space.

(1) Donated goods; i.e., expendable personal property/supplies, and donated use of space may be furnished to an organization. The value of the goods and space is not reimbursable either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in Sec. __.23 of Circular A-110. The value of the donations shall be determined in accordance with Sec. __.23 of Circular A-110. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

13. **Employee morale, health, and welfare costs and credits.** The costs of house publications, health or first-aid clinics, and/or infirmaries, recreational activities, employees' counseling services, and other expenses incurred in accordance with the organization's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance are allowable. Such costs will be equitably apportioned to all activities of the organization. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

14. **Entertainment costs.** Costs of amusement, diversion, social activities, ceremonials, and costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable (but see **paragraphs 13 and 30**).

15. **Equipment and other capital expenditures.**

a. As used in this paragraph, the following terms have the meanings set forth below:

(1) "Equipment" means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) \$5000. The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable use allowances or depreciation on the equipment, or by amortizing the amount to be written off over a period of years as negotiated with the Federal cognizant agency.

(2) **Acquisition cost** means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.

(3) **Special purpose equipment** means equipment which is usable only for research, medical, scientific, or technical activities. Examples of special purpose equipment include microscopes, x-ray machines, surgical instruments, and spectrometers.

(4) **General purpose equipment** means equipment which is usable for other than research, medical, scientific, or technical activities, whether or not special modifications are needed to make them suitable for a particular purpose. Examples of general purpose equipment include office equipment and furnishings, air conditioning equipment, reproduction and printing equipment, motor vehicles, and automatic data processing equipment.

b. (1) Capital expenditures for general purpose equipment are unallowable as a direct cost except with the prior approval of the awarding agency.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$5000 or more have the prior approval of awarding agency.

c. Capital expenditures for land or buildings are unallowable as a direct cost except

with the prior approval of the awarding agency.

d. Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior approval of the awarding agency.

e. Equipment and other capital expenditures are unallowable as indirect costs. However, see **paragraph 11** for allowability of use allowances or depreciation on buildings, capital improvements, and equipment. Also, see **paragraph 46** for allowability of rental costs for land, buildings, and equipment.

16. Fines and penalties. Costs of fines and penalties resulting from violations of, or failure of the organization to comply with Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of an award or instructions in writing from the awarding agency.

17. Fringe benefits. See **subparagraph 7.f.**

18. Goods or services for personal use. Costs of goods or services for personal use of the organization's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

19. Housing and personal living expenses.

a. Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent, etc.), housing allowances and personal living expenses for/of the organization's officers are unallowable as fringe benefit or indirect costs regardless of whether the cost is reported as taxable income to the employees. These costs are allowable as direct costs to sponsored award when necessary for the performance of the sponsored award and approved by awarding agencies.

b. The term "officers" includes current and past officers and employees.

20. Idle facilities and idle capacity.

a. As used in this paragraph, the following terms have the meanings set forth below:

(1) **Facilities** means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the organization.

(2) **Idle facilities** means completely unused facilities that are excess to the organization's current needs.

(3) **Idle capacity** means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis may be used if it can be shown that this amount of usage could normally be expected for the type of facility involved.

(4) **Costs of idle facilities or idle capacity** means costs such as maintenance, repair, housing, rent, and other related costs, e.g., property taxes, insurance, and depreciation

or use allowances.

b. The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet fluctuations in workload; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subparagraph, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending upon the initiative taken to use, lease, or dispose of such facilities (but see **subparagraphs 48.b and d**).

c. The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be idle facilities.

21. **Independent research and development.** [Reserved]

22. **Insurance and indemnification.**

a. Insurance includes insurance which the organization is required to carry, or which is approved, under the terms of the award and any other insurance which the organization maintains in connection with the general conduct of its operations. This paragraph does not apply to insurance which represents fringe benefits for employees (see **subparagraphs 7.f and 7.h(2)**).

(1) Costs of insurance required or approved, and maintained, pursuant to the award are allowable.

(2) Costs of other insurance maintained by the organization in connection with the general conduct of its operations are allowable subject to the following limitations:

(a) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances.

(b) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of management fees.

(c) Costs of insurance or of any provisions for a reserve covering the risk of loss or damage to Federal property are allowable only to the extent that the organization is liable for such loss or damage.

(d) Provisions for a reserve under a self-insurance program are allowable to the extent that types of coverage, extent of coverage, rates, and premiums would have been allowed had insurance been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, shall not exceed the present value of the liability.

(e) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see **subparagraph 7.f(4)**). The cost of such

insurance when the organization is identified as the beneficiary is unallowable.

(f) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the organization's materials or workmanship are unallowable.

(g) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of Federal research programs only to the extent that the Federal research programs involve human subjects or training of participants in research techniques. Medical liability insurance costs shall be treated as a direct cost and shall be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

(3) Actual losses which could have been covered by permissible insurance (through the purchase of insurance or a self-insurance program) are unallowable unless expressly provided for in the award, except:

(a) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice are allowable.

(b) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of supplies, which occur in the ordinary course of operations, are allowable.

b. Indemnification includes securing the organization against liabilities to third persons and any other loss or damage, not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the organization only to the extent expressly provided in the award.

23. Interest, fundraising, and investment management costs.

a. Interest.

(1) Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable. However, interest on debt incurred after the effective date of this revision to acquire or replace capital assets (including renovations, alterations, equipment, land, and capital assets acquired through capital leases), acquired after the effective date of this revision and used in support of sponsored agreements is allowable, provided that:

(a) For facilities acquisitions (excluding renovations and alterations) costing over \$10 million where the Federal Government's reimbursement is expected to equal or exceed 40 percent of an asset's cost, the non-profit organization prepares, prior to the acquisition or replacement of the capital asset(s), a justification that demonstrates the need for the facility in the conduct of federally-sponsored activities. Upon request, the needs justification must be provided to the Federal agency with cost cognizance authority as a prerequisite to the continued allowability of interest on debt and depreciation related to the facility. The needs justification for the acquisition of a facility should include, at a minimum, the following:

A statement of purpose and justification for facility acquisition or replacement

A statement as to why current facilities are not adequate

A statement of planned future use of the facility

A description of the financing agreement to be arranged for the facility

A summary of the building contract with estimated cost information and statement of source and use of funds

A schedule of planned occupancy dates

(b) For facilities costing over \$500,000, the non-profit organization prepares, prior to the acquisition or replacement of the facility, a lease/purchase analysis in accordance with the provisions of Sec. __.30 through __.37 of Circular A-110, which shows that a financed purchase or capital lease is less costly to the organization than other leasing alternatives, on a net present value basis. Discount rates used should be equal to the non-profit organization's anticipated interest rates and should be no higher than the fair market rate available to the non-profit organization from an unrelated ("arm's length") third-party. The lease/purchase analysis shall include a comparison of the net present value of the projected total cost comparisons of both alternatives over the period the asset is expected to be used by the non-profit organization. The cost comparisons associated with purchasing the facility shall include the estimated purchase price, anticipated operating and maintenance costs (including property taxes, if applicable) not included in the debt financing, less any estimated asset salvage value at the end of the period defined above. The cost comparison for a capital lease shall include the estimated total lease payments, any estimated bargain purchase option, operating and maintenance costs, and taxes not included in the capital leasing arrangement, less any estimated credits due under the lease at the end of the period defined above. Projected operating lease costs shall be based on the anticipated cost of leasing comparable facilities at fair market rates under rental agreements that would be renewed or reestablished over the period defined above, and any expected maintenance costs and allowable property taxes to be borne by the non-profit organization directly or as part of the lease arrangement.

(c) The actual interest cost claimed is predicated upon interest rates that are no higher than the fair market rate available to the non-profit organization from an unrelated ("arm's length") third party.

(d) Investment earnings, including interest income, on bond or loan principal, pending payment of the construction or acquisition costs, are used to offset allowable interest cost. Arbitrage earnings reportable to the Internal Revenue Service are not required to be offset against allowable interest costs.

(e) Reimbursements are limited to the least costly alternative based on the total cost analysis required under **subparagraph (b)**. For example, if an operating lease is determined to be less costly than purchasing through debt financing, then reimbursement is limited to the amount determined if leasing had been used. In all cases where a lease/purchase analysis is performed, Federal reimbursement shall be based upon the least expensive alternative.

(f) Non-profit organizations are also subject to the following conditions:

(i) Interest on debt incurred to finance or refinance assets acquired before or reacquired after the effective date of this Circular is not allowable.

(ii) For debt arrangements over \$1 million, unless the non-profit organization makes an initial equity contribution to the asset purchase of 25 percent or more, non-profit organizations shall reduce claims for interest expense by an amount equal to imputed interest earnings on excess cash flow, which is to be calculated as follows. Annually, non-profit organizations shall prepare a cumulative (from the inception of the project) report of monthly cash flows that includes inflows and outflows, regardless of the funding source. Inflows consist of depreciation expense, amortization of capitalized construction interest, and annual interest expense. For cash flow calculations, the

annual inflow figures shall be divided by the number of months in the year (usually 12) that the building is in service for monthly amounts. Outflows consist of initial equity contributions, debt principal payments (less the pro rata share attributable to the unallowable costs of land) and interest payments. Where cumulative inflows exceed cumulative outflows, interest shall be calculated on the excess inflows for that period and be treated as a reduction to allowable interest expense. The rate of interest to be used to compute earnings on excess cash flows shall be the three month Treasury Bill closing rate as of the last business day of that month.

(iii) Substantial relocation of federally-sponsored activities from a facility financed by indebtedness, the cost of which was funded in whole or part through Federal reimbursements, to another facility prior to the expiration of a period of 20 years requires notice to the Federal cognizant agency. The extent of the relocation, the amount of the Federal participation in the financing, and the depreciation and interest charged to date may require negotiation and/or downward adjustments of replacement space charged to Federal programs in the future.

(iv) The allowable costs to acquire facilities and equipment are limited to a fair market value available to the non-profit organization from an unrelated ("arm's length") third party.

(2) For non-profit organizations subject to "full coverage" under the Cost Accounting Standards (CAS) as defined at 48 CFR 9903.201, the interest allowability provisions of **subparagraph a** do not apply. Instead, these organizations' sponsored agreements are subject to CAS 414 (48 CFR 9903.414), cost of money as an element of the cost of facilities capital, and CAS 417 (48 CFR 9903.417), cost of money as an element of the cost of capital assets under construction.

(3) The following definitions are to be used for purposes of **paragraph 23**:

(a) **Re-acquired assets** means assets held by the non-profit organization prior to the effective date of this revision that have again come to be held by the organization, whether through repurchase or refinancing. It does not include assets acquired to replace older assets.

(b) **Initial equity contribution** means the amount or value of contributions made by non-Federal entities for the acquisition of the asset or prior to occupancy of facilities.

(c) **Asset costs** means the capitalizable costs of an asset, including construction costs, acquisition costs, and other such costs capitalized in accordance with GAAP.

b. Costs of organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

d. Fundraising and investment activities shall be allocated an appropriate share of indirect costs under the conditions described in **subparagraph B.3 of Attachment A**.

24. Labor relations costs. Costs incurred in maintaining satisfactory relations between the organization and its employees, including costs of labor management committees, employee publications, and other related activities are allowable.

25.

Lobbying.

a. Notwithstanding other provisions of this Circular, costs associated with the following activities are unallowable:

(1) Attempts to influence the outcomes of any Federal, State, or local election, referendum, initiative, or similar procedure, through in kind or cash contributions, endorsements, publicity, or similar activity;

(2) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections;

(3) Any attempt to influence: (i) The introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or State legislation through communication with any member or employee of the Congress or State legislature (including efforts to influence State or local officials to engage in similar lobbying activity), or with any Government official or employee in connection with a decision to sign or veto enrolled legislation;

(4) Any attempt to influence: (i) The introduction of Federal or State legislation; or (ii) the enactment or modification of any pending Federal or State legislation by preparing, distributing or using publicity or propaganda, or by urging members of the general public or any segment thereof to contribute to or participate in any mass demonstration, march, rally, fundraising drive, lobbying campaign or letter writing or telephone campaign; or

(5) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

b. The following activities are excepted from the coverage of **subparagraph a**:

(1) Providing a technical and factual presentation of information on a topic directly related to the performance of a grant, contract or other agreement through hearing testimony, statements or letters to the Congress or a State legislature, or subdivision, member, or cognizant staff member thereof, in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a regularly scheduled hearing) made by the recipient member, legislative body or subdivision, or a cognizant staff member thereof; provided such information is readily obtainable and can be readily put in deliverable form; and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearing.

(2) Any lobbying made unallowable by **subparagraph a(3)** to influence State legislation in order to directly reduce the cost, or to avoid material impairment of the organization's authority to perform the grant, contract, or other agreement.

(3) Any activity specifically authorized by statute to be undertaken with funds from the grant, contract, or other agreement.

c. (1) When an organization seeks reimbursement for indirect costs, total lobbying costs shall be separately identified in the indirect cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of

subparagraph B.3 of Attachment A.

(2) Organizations shall submit, as part of the annual indirect cost rate proposal, a certification that the requirements and standards of this paragraph have been complied with.

(3) Organizations shall maintain adequate records to demonstrate that the determination of costs as being allowable or unallowable pursuant to **paragraph 25** complies with the requirements of this Circular.

(4) Time logs, calendars, or similar records shall not be required to be created for purposes of complying with this paragraph during any particular calendar month when:

(1) the employee engages in lobbying (as defined in **subparagraphs (a) and (b)**) 25 percent or less of the employee's compensated hours of employment during that calendar month, and (2) within the preceding five-year period, the organization has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs. When conditions **(1) and (2)** are met, organizations are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions **(1) and (2)** are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(5) Agencies shall establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of **paragraph 25**. Any such advance resolution shall be binding in any subsequent settlements, audits or investigations with respect to that grant or contract for purposes of interpretation of this Circular; provided, however, that this shall not be construed to prevent a contractor or grantee from contesting the lawfulness of such a determination.

26. Losses on other awards. Any excess of costs over income on any award is unallowable as a cost of any other award. This includes, but is not limited to, the organization's contributed portion by reason of cost sharing agreements or any under-recoveries through negotiation of lump sums for, or ceilings on, indirect costs.

27. Maintenance and repair costs. Costs incurred for necessary maintenance, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life shall be treated as capital expenditures (see **paragraph 15**).

28. Materials and supplies. The costs of materials and supplies necessary to carry out an award are allowable. Such costs should be charged at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the organization. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges may be a proper part of material cost. Materials and supplies charged as a direct cost should include only the materials and supplies actually used for the performance of the contract or grant, and due credit should be given for any excess materials or supplies retained, or returned to vendors.

29. **Meetings and conferences.**

- a. Costs associated with the conduct of meetings and conferences include the cost of renting facilities, meals, speakers' fees, and the like. But see **paragraph 14**, Entertainment costs, and **paragraph 34**, Participant support costs.
- b. To the extent that these costs are identifiable with a particular cost objective, they should be charged to that objective (see **paragraph B of Attachment A**). These costs are allowable, provided that they meet the general tests of allowability, shown in **paragraph A of Attachment A** to this Circular.
- c. Costs of meetings and conferences held to conduct the general administration of the organization are allowable.

30. **Memberships, subscriptions, and professional activity costs.**

- a. Costs of the organization's membership in business, technical, and professional organizations are allowable.
- b. Costs of the organization's subscriptions to business, professional, and technical periodicals are allowable.
- c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.
- d. Costs of membership in any civic or community organization are allowable with prior approval by Federal cognizant agency.
- e. Costs of membership in any country club or social or dining club or organization are unallowable.

31. **Organization costs.** Expenditures, such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the organization, in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the awarding agency.

32. **Overtime, extra-pay shift, and multi-shift premiums.** Premiums for overtime, extra-pay shifts, and multi-shift work are allowable only with the prior approval of the awarding agency except:

- a. When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of equipment, or occasional operational bottlenecks of a sporadic nature.
- b. When employees are performing indirect functions, such as administration, maintenance, or accounting.
- c. In the performance of tests, laboratory procedures, or other similar operations which

are continuous in nature and cannot reasonably be interrupted or otherwise completed.
d. When lower overall cost to the Federal Government will result.

33. Page charges in professional journals. Page charges for professional journal publications are allowable as a necessary part of research costs, where:

- a. The research papers report work supported by the Federal Government; and
- b. The charges are levied impartially on all research papers published by the journal, whether or not by federally-sponsored authors.

34. Participant support costs. Participant support costs are direct costs for items such as stipends or subsistence allowances, travel allowances, and registration fees paid to or on behalf of participants or trainees (but not employees) in connection with meetings, conferences, symposia, or training projects. These costs are allowable with the prior approval of the awarding agency.

35. Patent costs.

a. Costs of (i) preparing disclosures, reports, and other documents required by the award and of searching the art to the extent necessary to make such disclosures, (ii) preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government, and (iii) general counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee agreements are allowable (but see **paragraph 39**).

b. Cost of preparing disclosures, reports, and other documents and of searching the art to the extent necessary to make disclosures, if not required by the award, are unallowable. Costs in connection with (i) filing and prosecuting any foreign patent application, or (ii) any United States patent application, where the award does not require conveying title or a royalty-free license to the Federal Government, are unallowable (also see **paragraph 47**).

36. Pension plans. See **subparagraph 7.h.**

37. Plant security costs. Necessary expenses incurred to comply with Federal security requirements or for facilities protection, including wages, uniforms, and equipment of personnel are allowable.

38. Pre-award costs. Pre-award costs are those incurred prior to the effective date of the award directly pursuant to the negotiation and in anticipation of the award where such costs are necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the written approval of the awarding agency.

39. Professional service costs.

a. Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the organization, are allowable, subject to **subparagraphs b and c** when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government.

b. In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the organization's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Federal awards.

(4) The impact of Federal awards on the organization's business (i.e., what new problems have arisen).

(5) Whether the proportion of Federal work to the organization's total business is such as to influence the organization in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Federal grants and contracts.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-Federal awards.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

c. In addition to the factors in **subparagraph b**, retainer fees to be allowable must be supported by evidence of bona fide services available or rendered.

40. Profits and losses on disposition of depreciable property or other capital assets.

a. (1) Gains and losses on sale, retirement, or other disposition of depreciable property shall be included in the year in which they occur as credits or charges to cost grouping(s) in which the depreciation applicable to such property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate cost grouping(s) shall be the difference between the amount realized on the property and the undepreciated basis of the property.

(2) Gains and losses on the disposition of depreciable property shall not be recognized as a separate credit or charge under the following conditions:

(a) The gain or loss is processed through a depreciation reserve account and is reflected in the depreciation allowable under **paragraph 11**.

(b) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(c) A loss results from the failure to maintain permissible insurance, except as otherwise provided in **subparagraph 22.a(3)**.

(d) Compensation for the use of the property was provided through use allowances in lieu of depreciation in accordance with **paragraph 11**.

(e) Gains and losses arising from mass or extraordinary sales, retirements, or other

dispositions shall be considered on a case-by-case basis.

b. Gains or losses of any nature arising from the sale or exchange of property other than the property covered in **subparagraph a** shall be excluded in computing award costs.

41. **Publication and printing costs.**

a. Publication costs include the costs of printing (including the processes of composition, plate-making, press work, binding, and the end products produced by such processes), distribution, promotion, mailing, and general handling.

b. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the organization.

c. Publication and printing costs are unallowable as direct costs except with the prior approval of the awarding agency.

d. The cost of page charges in journals is addressed **paragraph 33**.

42. **Rearrangement and alteration costs.** Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable with the prior approval of the awarding agency.

43. **Reconversion costs.** Costs incurred in the restoration or rehabilitation of the organization's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, fair wear and tear excepted, are allowable.

44. **Recruiting costs.**

a. Subject to **subparagraphs b, c, and d**, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well-managed recruitment program. Where the organization uses employment agencies, costs that are not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal organizational practices in this respect), are unallowable.

c. Costs of help wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other organizations that do not meet the test of reasonableness or do not conform with the established practices of the organization, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after being hired, the organization will be required to refund or credit such relocation costs to the Federal Government.

45. **Relocation costs.**

a. Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitation described in **subparagraphs b, c, and d**, provided that:

- (1) The move is for the benefit of the employer.
- (2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.
- (3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

b. Allowable relocation costs for current employees are limited to the following:

- (1) The costs of transportation of the employee, members of his immediate family and his household, and personal effects to the new location.
- (2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to maximum period of 30 days, including advance trip time.
- (3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in **(4)**, are limited to 8 per cent of the sales price of the employee's former home.
- (4) The continuing costs of ownership of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing up expenses), utilities, taxes, and property insurance.
- (5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of canceling an unexpired lease, disconnecting and reinstalling household appliances, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.

c. Allowable relocation costs for new employees are limited to those described in **(1) and (2) of subparagraph b**. When relocation costs incurred incident to the recruitment of new employees have been allowed either as a direct or indirect cost and the employee resigns for reasons within his control within 12 months after hire, the organization shall refund or credit the Federal Government for its share of the cost. However, the costs of travel to an overseas location shall be considered travel costs in accordance with **paragraph 55** and not relocation costs for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.

d. The following costs related to relocation are unallowable:

- (1) Fees and other costs associated with acquiring a new home.
- (2) A loss on the sale of a former home.
- (3) Continuing mortgage principal and interest payments on a home being sold.
- (4) Income taxes paid by an employee related to reimbursed relocation costs.

46.

Rental

costs.

- a. Subject to the limitations described in **subparagraphs b through d**, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased.
- b. Rental costs under sale and leaseback arrangements are allowable only up to the amount that would be allowed had the organization continued to own the property.
- c. Rental costs under less-than-arms-length leases are allowable only up to the amount that would be allowed had title to the property vested in the organization. For this purpose, a less-than-arms-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between (i) divisions of an organization; (ii) organizations under common control through common officers, directors, or members; and (iii) an organization and a director, trustee, officer, or key employee of the organization or his immediate family either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest.
- d. Rental costs under leases which are required to be treated as capital leases under GAAP, are allowable only up to the amount that would be allowed had the organization purchased the property on the date the lease agreement was executed, i.e., to the amount that minimally would pay for depreciation or use allowances, maintenance, taxes, and insurance. Interest costs related to capitalized leases are allowable to the extent they meet criteria in **subparagraph 23.a**. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the organization purchased the facility.

47. Royalties and other costs for use of patents and copyrights.

- a. Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the award are allowable unless:
 - (1) The Federal Government has a license or the right to free use of the patent or copyright.
 - (2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.
 - (3) The patent or copyright is considered to be unenforceable.
 - (4) The patent or copyright is expired.
- b. Special care should be exercised in determining reasonableness where the royalties may have arrived at as a result of less-than-arm's-length bargaining, e.g.:
 - (1) Royalties paid to persons, including corporations, affiliated with the organization.
 - (2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.
 - (3) Royalties paid under an agreement entered into after an award is made to an organization.
- c. In any case involving a patent or copyright formerly owned by the organization, the amount of royalty allowed should not exceed the cost which would have been allowed

had the organization retained title thereto.

48. Selling and marketing. Costs of selling and marketing any products or services of the organization (unless allowed under **paragraph 1** as allowable public relations costs) are unallowable. These costs, however, are allowable as direct costs, with prior approval by awarding agencies, when they are necessary for the performance of Federal programs.

49. Severance pay.

a. Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by organizations to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by (i) law, (ii) employer-employee agreement, (iii) established policy that constitutes, in effect, an implied agreement on the organization's part, or (iv) circumstances of the particular employment.

b. Costs of severance payments are divided into two categories as follows:

(1) Actual normal turnover severance payments shall be allocated to all activities; or, where the organization provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the organization.

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will be considered on a case-by-case basis in the event or occurrence.

c. Costs incurred in certain severance pay packages (commonly known as "a golden parachute" payment) which are in an amount in excess of the normal severance pay paid by the organization to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the organization's assets are unallowable.

d. Severance payments to foreign nationals employed by the organization outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the organization in the United States are unallowable, unless they are necessary for the performance of Federal programs and approved by awarding agencies.

e. Severance payments to foreign nationals employed by the organization outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the organization in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by awarding agencies.

50. Specialized service facilities.

a. The costs of services provided by highly complex or specialized facilities operated by the organization, such as electronic computers and wind tunnels, are allowable, provided the charges for the services meet the conditions of either **subparagraph b or c** and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under **subparagraph A.5 of Attachment A**.

b. The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that (i) does not discriminate against federally-supported activities of the organization, including usage by the organization for internal purposes, and (ii) is designed to recover only the aggregate costs of the services. The costs of each service shall consist normally of both its direct costs and its allocable share of all indirect costs. Advance agreements pursuant to **subparagraph A.6 of Attachment A** are particularly important in this situation.

c. Where the costs incurred for a service are not material, they may be allocated as indirect costs.

51.

Taxes.

a. In general, taxes which the organization is required to pay and which are paid or accrued in accordance with GAAP, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for (i) taxes from which exemptions are available to the organization directly or which are available to the organization based on an exemption afforded the Federal Government and in the latter case when the awarding agency makes available the necessary exemption certificates, (ii) special assessments on land which represent capital improvements, and (iii) Federal income taxes.

b. Any refund of taxes, and any payment to the organization of interest thereon, which were allowed as award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Federal Government.

52. **Termination costs.** Termination of awards generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the award not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the other provisions of this Circular in termination situations.

a. **Common items.** The cost of items reasonably usable on the organization's other work shall not be allowable unless the organization submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the organization, the awarding agency should consider the organization's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the organization shall be regarded as evidence that such items are reasonably usable on the organization's other work. Any acceptance of common items as allocable to the terminated portion of the award shall be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

b. **Costs continuing after termination.** If in a particular case, despite all reasonable efforts by the organization, certain costs cannot be discontinued immediately after the

effective date of termination, such costs are generally allowable within the limitations set forth in this Circular, except that any such costs continuing after termination due to the negligent or willful failure of the organization to discontinue such costs shall be unallowable.

c. **Loss of useful value.** Loss of useful value of special tooling, machinery and equipment which was not charged to the award as a capital expenditure is generally allowable if:

(1) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the organization.

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the awarding agency;

d. **Rental costs.** Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated award less the residual value of such leases, if (i) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the award and such further period as may be reasonable, and (ii) the organization makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the award, and of reasonable restoration required by the provisions of the lease.

e. **Settlement expenses.** Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(a) The preparation and presentation to awarding agency of settlement claims and supporting data with respect to the terminated portion of the award, unless the termination is for default (see Sec. __.61 of Circular A-110); and

(b) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the award, except when grantees or contractors are reimbursed for disposals at a predetermined amount in accordance with Sec. __.30 through __.37 of Circular A-110.

(3) Indirect costs related to salaries and wages incurred as settlement expenses in **subparagraphs (1) and (2)**. Normally, such indirect costs shall be limited to fringe benefits, occupancy cost, and immediate supervision.

f. **Claims under subawards.** Claims under subawards, including the allocable portion of claims which are common to the award, and to other work of the organization are generally allowable. An appropriate share of the organization's indirect expense may be allocated to the amount of settlements with subcontractors and/or subgrantees, provided that the amount allocated is otherwise consistent with the basic guidelines contained in **Attachment A**. The indirect expense so allocated shall exclude the same and similar costs claimed directly or indirectly as settlement expenses.

53. **Training and education costs.**

a. Costs of preparation and maintenance of a program of instruction including but not limited to on-the-job, classroom, and apprenticeship training, designed to increase the vocational effectiveness of employees, including training materials, textbooks, salaries

or wages of trainees (excluding overtime compensation which might arise therefrom), and (i) salaries of the director of training and staff when the training program is conducted by the organization; or (ii) tuition and fees when the training is in an institution not operated by the organization, are allowable.

b. Costs of part-time education, at an undergraduate or post-graduate college level, including that provided at the organization's own facilities, are allowable only when the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work, and are limited to:

(1) Training materials.

(2) Textbooks.

(3) Fees charges by the educational institution.

(4) Tuition charged by the educational institution or, in lieu of tuition, instructors' salaries and the related share of indirect costs of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution.

(5) Salaries and related costs of instructors who are employees of the organization.

(6) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year and only to the extent that circumstances do not permit the operation of classes or attendance at classes after regular working hours; otherwise, such compensation is unallowable.

c. Costs of tuition, fees, training materials, and textbooks (but not subsistence, salary, or any other emoluments) in connection with full-time education, including that provided at the organization's own facilities, at a post-graduate (but not undergraduate) college level, are allowable only when the course or degree pursued is related to the field in which the employee is now working or may reasonably be expected to work, and only where the costs receive the prior approval of the awarding agency. Such costs are limited to the costs attributable to a total period not to exceed one school year for each employee so trained. In unusual cases the period may be extended.

d. Costs of attendance of up to 16 weeks per employee per year at specialized programs specifically designed to enhance the effectiveness of executives or managers or to prepare employees for such positions are allowable. Such costs include enrollment fees, training materials, textbooks and related charges, employees' salaries, subsistence, and travel. Costs allowable under this paragraph do not include those for courses that are part of a degree-oriented curriculum, which are allowable only to the extent set forth in **subparagraphs b and c**.

e. Maintenance expense, and normal depreciation or fair rental, on facilities owned or leased by the organization for training purposes are allowable to the extent set forth in **paragraphs 11, 27, and 46**.

f. Contributions or donations to educational or training institutions, including the donation of facilities or other properties, and scholarships or fellowships, are unallowable.

g. Training and education costs in excess of those otherwise allowable under **subparagraphs b and c** may be allowed with prior approval of the awarding agency. To be considered for approval, the organization must demonstrate that such costs are consistently incurred pursuant to an established training and education program, and that the course or degree pursued is relative to the field in which the employee is now working or may reasonably be expected to work.

54. Transportation costs Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly charged as transportation costs or added to the cost of such items (see **paragraph 28**). Where identification with the materials received cannot readily be made, transportation costs may be charged to the appropriate indirect cost accounts if the organization follows a consistent, equitable procedure in this respect.

55. Travel costs.

a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the organization. Travel costs are allowable subject to **subparagraphs b through e**, when they are directly attributable to specific work under an award or are incurred in the normal course of administration of the organization.

b. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used results in charges consistent with those normally allowed by the organization in its regular operations.

c. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (i) require circuitous routing, (ii) require travel during unreasonable hours, (iii) greatly increase the duration of the flight, (iv) result in additional costs which would offset the transportation savings, or (v) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Necessary and reasonable costs of family movements and personnel movements of a special or mass nature are allowable, pursuant to **paragraphs 44 and 45**, subject to allocation on the basis of work or time period benefited when appropriate. Advance agreements are particularly important.

e. Direct charges for foreign travel costs are allowable only when the travel has received prior approval of the awarding agency. Each separate foreign trip must be approved. For purposes of this provision, foreign travel is defined as any travel outside of Canada and the United States and its territories and possessions. However, for an organization located in foreign countries, the term "foreign travel" means travel outside that country.

56. Trustees. Travel and subsistence costs of trustees (or directors) are allowable. The costs are subject to restrictions regarding lodging, subsistence and air travel costs provided in **paragraph 55**.

ATTACHMENT

Circular

No.

C

A-122

NON-PROFIT ORGANIZATIONS NOT SUBJECT TO THIS CIRCULAR

Aerospace

Corporation,

El

Segundo,

California

Argonne National Laboratory, Chicago, Illinois
 Atomic Casualty Commission, Washington, D.C.
 Battelle Memorial Institute, Headquartered in Columbus, Ohio
 Brookhaven National Laboratory, Upton, New York
 Charles Stark Draper Laboratory, Incorporated, Cambridge, Massachusetts
 Environmental Institute of Michigan, Ann Arbor, Michigan
 Hanford Environmental Health Foundation, Richland, Washington
 IIT Research Institute, Chicago, Illinois
 Institute for Defense Analysis, Alexandria, Virginia
 Mitre Corporation, Bedford, Massachusetts
 National Radiological Astronomy Observatory, Green Bank, West Virginia
 National Renewable Energy Laboratory, Golden, Colorado
 Oak Ridge Associated Universities, Oak Ridge, Tennessee
 Rand Corporation, Santa Monica, California
 Research Triangle Institute, Research Triangle Park, North Carolina
 Riverside Research Institute, New York, New York
 Southern Research Institute, Birmingham, Alabama
 Southwest Research Institute, San Antonio, Texas
 SRI International, Menlo Park, California
 Syracuse Research Corporation, Syracuse, New York
 Universities Research Association, Incorporated (National Acceleration Lab), Argonne, Illinois

Non-profit insurance companies, such as Blue Cross and Blue Shield Organizations
 Other non-profit organizations as negotiated with awarding agencies

BILLING CODE 3110-01

Exhibit K

CHILD SUPPORT COMPLIANCE PROGRAM CERTIFICATION

CHILD SUPPORT COMPLIANCE PROGRAM CERTIFICATION

Los Angeles County Code Chapter 2.200 establishes the Los Angeles County Child Support Compliance Program. This Program requires the County to provide certain information to the District Attorney concerning its employees and business licensees. It further requires that bidders or proposers for County contracts submit certifications of Program compliance to the soliciting County department along with their bids or proposals. (In an emergency procurement, as determined by the soliciting County department, these certifications may be provided immediately following the procurement.)

IN ORDER TO COMPLY WITH THIS REQUIREMENT, COMPLETE THIS FORM AND SUBMIT IT DIRECTLY TO THE SOLICITING COUNTY DEPARTMENT ALONG WITH YOUR BID OR PROPOSAL. IN ADDITION, PROVIDE A COPY TO THE DISTRICT ATTORNEY AT THE ADDRESS OR FAX NUMBER SHOWN BELOW. SOLE PRACTITIONER MEMBERS OF AN ASSOCIATION MUST COMPLETE AND SUBMIT INDIVIDUAL FORMS.

I, _____ (print name as shown in bid or proposal), hereby submit this certification to the _____ (County department) _____, pursuant to the provisions of County Code Section 2.200.060, and hereby certify that (contractor or association name as shown in bid or proposal) _____, an independently-owned or franchiser-owned business (circle one), located at (contractor or, if an association, associated member address) _____

is in compliance with Los Angeles County's Child Support Compliance Program and has met the following requirements:

- 1) Submitted a completed Principal Owner Information Form to the District Attorney Bureau of Family Support Operations;
- 2) Fully complied with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and/or California Unemployment Insurance Code Section 1088.5 and will continue to comply with such reporting requirements;
- 3) Fully complied with all lawfully served Wage and Earnings Withholding Orders or District Attorney Notices of Wage and Earnings Assignment, pursuant to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b) or pursuant to applicable provisions of the Uniform Interstate Family Support Act, and will continue to comply with such Orders or Notices.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of _____
(Month and Year)

at: _____
(City/State)

(Tele
phone No.)

by: _____
(Signature of a principal owner, an officer, or manager responsible for submission of the bid or
proposal to the County.)

Copy to: District Attorney Bureau of Family Support Operations
Special Projects
P.O. Box 911009
Los Angeles, CA 90091-1009 FAX: (323) 869-0634
Telephone: (323) 832-7277 or (323) 832-7276

PRINCIPAL OWNER INFORMATION FORM

Los Angeles County Code Chapter 2.200 establishes the Los Angeles County Child Support Compliance Program. This Program requires the County to provide certain information to the District Attorney concerning its employees and business licensees. It further requires that bidders or proposers for County contracts provide directly to the District Attorney information concerning their "Principal Owners," that is, those natural persons who own an interest of 10 percent or more in the Contractor. For each "Principal Owner," the information which must be provided to the District Attorney is: 1) the Principal Owner's name, 2) his or her title, and 3) whether or not the Contractor has made a payment of any sort to the Principal Owner.

IN ORDER TO COMPLY WITH THIS REQUIREMENT, COMPLETE THIS FORM AND SUBMIT IT DIRECTLY TO THE DISTRICT ATTORNEY AT THE ADDRESS OR FAX NUMBER SHOWN BELOW ON OR BEFORE THE DATE YOU SUBMIT A BID OR PROPOSAL TO A COUNTY DEPARTMENT. MAINTAIN DOCUMENTATION OF SUBMISSION. SOLE PRACTITIONER MEMBERS OF AN ASSOCIATION MUST COMPLETE AND SUBMIT INDIVIDUAL FORMS.

In addition, bidders or proposers must certify to the soliciting County department that they are in full compliance with the Program requirements by submitting the Child Support Compliance Program Certification along with the bid or proposal.

To: District Attorney Bureau of Family Support Operations
Special Projects
P.O. Box 911009
Los Angeles, CA 90091-1009
FAX: (323) 869-0634

Contractor or Association Name as Shown on Bid or Proposal: _____

Contractor or Associated Member Name, if Contractor is an Association: _____

Contractor or Associated Member Address: _____

Telephone: _____ **FAX:** _____

County Department Receiving Bid or Proposal: _____

Type of Goods or Services To Be Provided: _____

Contract or Purchase Order No. (if applicable): _____

Principal Owners: Please check appropriate box. If box I is checked, no further information is required. Please sign and date the form below.

- I. ☐ No natural person owns an interest of 10 percent or more in this Contractor.
II. ☐ Required principal owner information is provided below. (Use a separate sheet if necessary.)

Name of Principal Owner

Title

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Received

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2. _____

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3. _____

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]

I declare under penalty of perjury that the foregoing information is true and correct.

By: _____

Date: _____

(Signature of a principal owner, an officer, or manager responsible for submission of the bid or proposal to the County.)

(Print Name)

(Title/Position)

[] To [] From District Attorney
Bureau of Family Support Operations
Special Projects
FAX: (323) 869-0634 Telephone: (323) 832-
7277 or (323) 832-7276

☐ **From** ☐ **To** Department Contact Person:

Department Name: _____

FAX: _____

Telephone: _____

Date _____

Contractor Name as Shown on the Bid or Proposal:

Contractor Address: _____

Phone No.: _____ FAX: _____

Name of Person Certifying Submission:

Date of Contractor Certification:

Date:

The Principal Owner Information Form:

<input type="checkbox"/>	Has been received and approved.
<input type="checkbox"/>	Has not been received. Contractor cannot document timely submission. Contractor may be deemed non-responsible.

Signature of Person Completing this Confirmation:

Print Name: _____

Phone Number:

EXHIBIT L

Internal Revenue Service Notice 1015

Have You Told Your Employees About the Earned Income Credit (EIC)?

What Is the EIC?

The EIC is a refundable tax credit for certain workers.

A change to note. Workers **cannot** claim the EIC if their 2000 investment income (such as interest and dividends) is over \$2,400.

Which Employees Must I Notify About the EIC?

You must notify each employee who worked for you at any time during the year and from whom you did not withhold income tax. However, you do not have to notify any employee who claimed exemption from withholding on **Form W-4**, Employee's Withholding Allowance Certificate.

Note: You are encouraged to notify each employee whose wages for 2000 are less than \$31,152 that he or she may be eligible for the EIC.

How and When Must I Notify My Employees?

You must give the employee one of the following:

• The IRS **Form W-2**, Wage and Tax Statement, which has the required information about the EIC on the back of **Copy B**.

• A substitute Form W-2 with the same EIC information on the back of the employee's copy that is on Copy B of the IRS Form W-2.

• **Notice 797**, Possible Federal Tax Refund Due to the Earned Income Credit (EIC).

• Your written statement with the same wording as Notice 797.

If you are required to give Form W-2 and do so on time, no further notice is necessary if the Form W-2 has the required information about the EIC on the back of the employee's copy. If a substitute Form W-2 is given on time but does not have the required information, you must notify the employee within 1 week of the date the substitute Form W-2 is given. If Form W-2 is required but is not given on time, you must give the employee Notice 797 or your written statement by the date Form W-2 is required to be given. If Form W-2 is not required, you must notify the employee by February 7, 2001.

You must hand the notice directly to the employee or send it by First-Class Mail to the employee's last known address. You will not meet the notification requirements by posting Notice 797 on an employee bulletin board or sending it through office mail. However, you may want to post the notice to help inform all employees of the EIC. You can get copies of the notice by calling 1-800-829-3676. You can also get the notice from the IRS Web Site at www.irs.gov.

How Will My Employees Know If They Can Claim the EIC?

The 2000 instructions for Forms 1040, 1040A, and 1040EZ, and **Pub. 596**, Earned Income Credit, explain who can claim the EIC. Generally, any employee who meets the following requirements may be able to claim the EIC for 2000.

Note: An employee **cannot** claim the EIC if he or she files *Form 2555* or *Form 2555-EZ* (relating to foreign earned income). Also, an employee who is a nonresident alien for any part of 2000 cannot claim the EIC unless he or she is married to a U.S. citizen or resident and elects to be taxed as a resident alien for all of 2000.

The employee's 2000 earned income and modified adjusted gross income are both under \$27,413 (under \$31,152 if the employee has more than one qualifying child; under \$10,380 if the employee does not have a qualifying child). **Earned income** for this purpose does not include amounts paid to inmates in penal institutions for their work.

* The employee's filing status is any status **except** married filing a separate return.

* The employee (and the employee's spouse if filing a joint return) is not a qualifying child of another person.

* For an employee without a qualifying child, the employee is at least age 25 but under 65 at the end of 2000. Also, no one may be entitled to claim the employee as a dependent and the employee's home must be in the United States for over half of 2000. If the employee is married filing a joint return, other rules apply.

How Do My Employees Claim the EIC?

Eligible employees claim the EIC on their 2000 tax return. Even employees who have no tax withheld from their pay or owe no tax can claim the EIC and get a refund, but they must file a tax return to do so. For example, if an employee has no tax withheld in 2000 and owes no tax but is eligible for a credit of \$797, he or she must file a 2000 tax return to get the \$797 refund.

How Do My Employees Get Advance EIC Payments?

Eligible employees who expect to have a qualifying child for 2001 can get part of the credit with their pay during the year by giving you a completed Form W-5, Earned Income Credit Advance Payment Certificate. You must include advance EIC payments with wages paid to these employees, but the payments are not wages and are not subject to payroll taxes. Generally, the payments are made from withheld income, social security, and Medicare taxes. For details, see Pub. 15, Employer's Tax Guide.

Notice 1015
(Rev. 10-2000)